

# HEBREW TRIBAL ECONOMY AND THE JUBILEE

AS ILLUSTRATED IN  
SEMITIC AND INDO-EUROPEAN  
VILLAGE COMMUNITIES

BY

HENRY SCHAEFFER, Ph. D., S. T. M.

AUTHOR OF  
THE SOCIAL LEGISLATION OF THE PRIMITIVE SEMITES  
AND  
PROFESSOR OF OLD TESTAMENT EXEGESIS  
THE LUTHERAN THEOLOGICAL SEMINARY  
AT CHICAGO, ILLINOIS



LEIPZIG

J. C. HINRICHS'SCHE BUCHHANDLUNG

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IN MEMORY  
OF  
MY PARENTS

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## Preface

The work under the above title is a supplementary volume to the eleventh chapter of the present writer's *Social Legislation of the Primitive Semites* with special reference to Hebrew Land Tenure and the Poor Laws, published in 1915 by Yale University Press. The opinion there expressed regarding the origin of the institution of the jubilee has now been reenforced, after years of painstaking study, with an array of facts tending to show that the economic features of this institution are part and parcel of Israel's tribal inheritance. In the period of tribalism the tribe and its subdivisions have a solidarity in religion, in politics, in moral and social economy. There is abundant evidence, in the early literature of Israel, of the dominance of the feeling of religious, political, moral, and economic solidarity. Anciently, the feeling of solidarity, originating in the family group, was gradually extended to the clan, to the tribe, and finally, as among the Hebrews, to the nation. Under tribal rule, society in general is dominated by a communal conception of religion and of social ethics. Tribal modes of thought concern themselves with the family group, the clanship, and the tribal group rather than with the individual as such. The rights of the individual are merged for the most part in the interests of his respective group. How can it be otherwise in a state of society where the individual can hardly exist without the help and protection of his group? If attacked by an outsider, his group will protect him, and, if necessary, exact a manifold vengeance for the shedding of his blood, the group being responsible for every one of its members. According to the old communal conception of ethics, a murderous attack upon one member of the kindred is an attack upon the whole group,

since one and the same life-blood animates all its members. Such an attack leads to group action, as illustrated by the practice of communal vengeance. Thus the law of retaliation receives a communal application on the principle of group responsibility. In like manner, the nomadic tribe is responsible not only for the personal safety of its members but also for their property. The tribe is usually identified with a certain district, which it holds in common as its property as opposed to other tribal groups. Within the assigned limits the land is common to every member of the same tribe. But security of tenure depends upon the ability of the tribe to protect its property against the encroachments of rival tribes. Invasions or predatory incursions from without, leading to the appropriation of tribal property, call for corporate action against the invaders who have violated the property rights, not of any particular individual, but of the tribe as a whole.

With the transition from the tribal stage to the settled, agricultural life of the village community, the organization of the tribe may have to undergo some necessary modifications and changes, but the inherited customs of the past remain essentially the same. For example, the old principle of group ownership is carried over almost bodily and adapted to the changed conditions of agricultural life. Under tribal rule, the group may be the tribe or any of its constituent units, such as the clan, sept, or family group; in settled communities the group is the village within the familiar shell of a cluster of homesteads, surrounded by arable and waste lands, belonging to what was originally a group of related clansmen. As in the period of tribalism the landed possessions of the tribe are held as the common property of the tribal group, so now, the agricultural village clings tenaciously to its adjacent lands as over against every other village, many of these lands being held down to comparatively recent times by the body of villagers collectively. Thus the old nomadic principle of common tribal ownership is narrowed down to the village community, with its common arable and waste lands, the sense of identity with the soil having contracted into the smaller tribal units, — the family group, the sept, or the clan, residing in its midst. But permanent geographical or regional grouping does not necessarily

involve a complete break with the past, especially in view of the remarkable tenacity of tribal customs and usages. Economically, there is a line of continuity which may be traced in all its details. Ample evidence of this is afforded by the agrarian arrangements of the institution of the year of jubilee.

The jubilee, as described in the book of Leviticus, where archaic practices are frequently preserved, reflects tribal ideas of landownership in the subjection of the individual clansman to the rules and regulations of his respective group. That the group should assert its rights over the individual in the manner proposed by the law of the jubilee is quite in accordance with analogy, similar regulations and customs being met with elsewhere. Originally, the settled village community, in its ancient and modern manifestations, is really a tribal form of agrarian society, as may be seen from a comparative study of Semitic and Indo-European village communities.

The land laws of Leviticus are strongly reminiscent, to say the least, of the old clan notions of landed property. Whatever may be said concerning the literary form of the twenty-fifth chapter of Leviticus, the fact remains that the regulations of the year of jubilee presuppose a tribal background. Full details of all the economic factors involved in our discussion of the subject will be found in the body of the book, beginning with chapter V.

**Henry Schaeffer**

Chicago, Illinois

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## Chapter I

### Tribal Organization

The law of the jubilee is regarded by Wellhausen and other biblical scholars as the product of a post-exilic school of priestly writers. This little volume proposes to show that the provisions of Leviticus 25:8ff. go back to very ancient times. The communalistic features of Hebrew economy, as set forth in the year of jubilee, point to a communal conception of property, and may best be explained as the logical development of the old tribal system.

It will be necessary to say a word concerning the tribal system of patriarchal Israel. The patriarchal household, to begin with, was not a family in the modern sense of the term. Abraham's household, for example, was a clan group of considerable size<sup>1</sup>, subject to the rule of the eldest male parent. The membership of such a household could be augmented by the rite of adoption. There can be no doubt that Abraham's steward, or chief slave, is regarded as a member of the household, since he will ultimately become the heir unless a son is born to the patriarch. The same principle applies to any or all of the households of patriarchal times. They all embraced not merely the children of the patriarch by his wives of full and secondary rank, but also the wives and children of his sons and his adopted slaves. It is easy to see how under these conditions the patriarchal household would soon grow into a respectable-looking clan or tribe. A good example of clan-formation is the household of Laban, comprising the members of Laban's household together with the wives and children of Jacob<sup>2</sup>. Says Jacob, 'I have

1) Gen. 12:5; 14:14; 17:12, 13; 25:1ff.

2) 30:26.



been twenty years in thy house; I have served thee fourteen years for thy two daughters, and six years for thy cattle. And Laban answered and said unto Jacob, The daughters are my daughters, and the children are my children, and the cattle are my cattle, and all that thou seest is mine<sup>1</sup>. The ownership of all property appertaining to the clan is vested in the patriarchal head of the group. But the authority of the clan-father, although practically supreme, was limited by tribal custom<sup>2</sup>. The solidarity of the patriarchal clan was such as to insure a proper distribution of tribal property for the benefit of all concerned. The wealth of the clan-father is shared by the clansmen, and hence there is no real poverty unless brought about by famine. In such an event the clan-father is no more exempt from the danger of starvation than the ordinary clansman<sup>3</sup>.

The biblical account ascribes the origin of the twelve tribes of Israel to the twelve sons of Jacob-Israel, who had wandered in time of famine to Egypt. These twelve sons and their households may be divided into four groups, severally descended from Leah and Rachel, and from the two handmaids of Jacob's wives, — Zilpah and Bilhah. The Leah group includes Reuben, Simeon, Levi, Judah, Issachar, and Zebulun; the Rachel group, Joseph<sup>4</sup> and Benjamin. Gad and Asher are assigned to Zilpah, the handmaid of Leah, whilst Dan and Naphtali represent the Bilhah group<sup>5</sup>. In course of time the households of the sons of Jacob expanded into the clans of Goshen, located immediately east of the Nile delta<sup>6</sup>. These liberty-loving clans were subsequently reduced to a state of serfdom. The Egyptians "set over them taskmasters to afflict them with their burdens. And they built for Pharaoh treasure cities, Pithom and Raamses . . . And they made their lives bitter with hard bondage, in mortar and in brick, and in all manner of service in the field"<sup>7</sup>. The exodus was the natural revolt of a semi-pastoral people against servile labors of any sort under military guard. After his fatal encounter with an Egyptian slave driver, Moses, a man of the tribe of Levi,

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1) 31: 41, 43.      2) Compare 38: 24—26.      3) 42: 1 ff.      4) subdivided into Manasseh and Ephraim 48: 19.      5) 29: 32 ff.; 35: 23—26 (Ex. 1: 1—5); 46: 8—27; 49: 2 ff.      6) Cp. Ex. 6: 14 ff.; Num. 1: 5 ff.; 26: 4 ff.      7) Ex. 1: 11, 14.

fled from Egypt and sojourned among the Midianites<sup>1</sup> of the Sinaitic peninsula. Here he lived the simple life of a shepherd, acquiring knowledge in the meantime of the geography of a region that was destined to play a conspicuous part in the early history of the Hebrews. His forty years of exile being at an end, Moses accepted the sacred call to a higher form of service. He then submitted his plans to the elders of the various septs and clans, who must be consulted in matters of importance. Having obtained their assent, Moses demanded in the name of Yahwe permission for the enslaved Hebrew clans to sacrifice in the desert of Arabia<sup>2</sup>. The request of Israel's champion was finally granted in consequence of a series of catastrophes. On the eve of their departure the elders of the clans are assembled in connection with the observance of the rite of the passover, which is undoubtedly a tribal festival, inasmuch as it concerns the clan rather than the individual<sup>3</sup>. With flocks and portable goods the children of Israel now set out under the leadership of Moses for the land of promise, sojourning principally at Kadesh and at the mount of God. A covenant is established at Horeb-Sinai, binding together the poorly organized clans and tribes on the basis of a common religion. The people on this occasion are represented by a special council of seventy, selected from the *zeqenim*, or elders<sup>4</sup>, of all the tribes. But time was needed for the consolidation of the results already achieved. The oasis of Kadesh, situated on the southern limits of Judah, seemed to be fairly well adapted to the modest requirements of the liberated clans. It was suitable for the immediate requirements of a semi-agricultural community, engaged in the rearing of cattle and of wheat culture<sup>5</sup>. At Kadesh the oracle of Yahwe dispensed, in cases of dispute between tribes and individuals, the *torot*, a series of judicial decisions, carrying with them the sanction of religion. Moses, acting in the capacity of both priest and judge, had taken upon himself the entire administration of justice. It is Jethro, the Midianite, who advises the

1) The people of Midian traced their ancestry to Abraham through his wife Keturah (Gen. 25:2). They were engaged in the caravan trade. Gen. 37:28, 36; Isa. 60:6. 2) Ex. 3:16—18; 5:1 ff. 3) 12:21. 4) See below, chap. VI. 5) Maspero, *The Struggle of the Nations*, 448; Gressmann, *Mose* (1913), 400—422. See Driver on Deut. 2:7; but compare Num. 20:5; Jer. 2:2.

subdivision of the judicial function into major and minor, Moses by an appeal to the sacred lot reserving for himself the former, and assigning the latter to an organized force of subordinate judges, whose authority depended upon tribal custom. 'Then Moses chose men of worth out of all Israel, and set them as heads over the people: rulers of thousands, rulers of hundreds, rulers of fifties, and rulers of tens<sup>1</sup>. The appointment of these judges on a numerical basis seems to run counter to the principles of tribal organization. Nevertheless it appears from Deuteronomy 1:15 that the judiciary officers appointed by Moses were none other than the elders or representative heads of the different tribal divisions. One might suppose that the members of the various tribes and clans would be willing to refer all major questions of right and precedence to divine authority, all minor questions being relegated to the jurisdiction of the elders. But we have elsewhere<sup>2</sup> pointed out that the ancient Israelites harbored within themselves a living germ of disorganization by their refusal to subordinate the feeling of independence and their instinctive clannishness to the larger interests of the federated tribes. There were those, who disputed the supremacy of Moses<sup>3</sup>, owing to their love of tribal freedom, which could not well endure the yoke of a ruler, irrespective of his qualifications for leadership. The sources indicate that Moses' right of priority to leadership in the prophetic office was not maintained without protest. 'And Miriam and Aaron spake against Moses, and said, Is it only with Moses that Yahwe hath spoken? Hath he not also spoken with us<sup>4</sup>?' Both Miriam and Aaron are compelled to seek the mediation of him whose unique prophetic position they had wrongly called in question, and Miriam is healed of her leprosy. Numbers 16:1ff. speaks of the protest of Korah against the priestly prerogatives of Moses and Aaron, on the ground that the people of Israel are equally holy by reason of Yahwe's presence in their midst. 'Now Korah and two hundred and fifty representatives of the people assembled themselves together against Moses and against Aaron, and said unto them,

1) Ex. 18:25.

2) See below, chap. III.

3) He was endowed with a many-sided character, combining in one and the same person all the functions of prophet, priest, leader, organizer, judge, and legislator.

4) Num. 12:1-2.

Enough now (with your pretensions), for all the congregation are holy, every one of them, inasmuch as Yahwe dwells in their midst; wherefore then lift ye up yourselves above the assembly of Yahwe? And when Moses heard it, he spake unto Korah and unto all his company, saying, Take censers, and put fire therein, and put incense upon them before Yahwe to morrow, and it shall be that the man whom Yahwe doth choose, he shall be holy . . . And fire came forth from Yahwe, and devoured the two hundred and fifty men that offered the incense.' The congregation, though involved in the sin and guilt of the principal offenders, is spared owing to the intercession of Moses and Aaron. The same chapter relates to an attack made upon his civil authority by members of the tribe of Reuben. 'And Dathan and Abiram, sons of Eliab, and On, the son of Peleth, sons of Reuben, rebelled against Moses. And Moses sent to call Dathan and Abiram, and they said, We will not come up. Is it a small thing that thou hast brought us up out of a land that floweth with milk and honey, to kill us in the wilderness, but thou must needs make thyself also a prince over us? Moreover thou hast not brought us into a land flowing with milk and honey, nor given us possession of arable fields and vineyards; wilt thou blindfold the eyes of these men? Then Moses rose up and went unto Dathan and Abiram, and the elders of Israel followed him. And he said, Depart, I pray you, from the tents of these wicked men, and touch nothing of theirs, lest ye be swept away in all their sins. And Dathan and Abiram came out, and stood at the door of their tents, and their wives, and their sons, and their little ones. And Moses said, Hereby ye shall know that Yahwe hath sent me to do all these things, and that I have not done them of mine own accord. If Yahwe do something extraordinary, and the ground open its mouth, and swallow them up, with all that is theirs, and they go down alive into Sheol; then ye shall understand that these men have despised Yahwe. And it came to pass that the ground clave asunder that was under them, and the ground did open its mouth, and swallowed them up, and their households'<sup>1</sup>. To judge from

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1) Heb. *bet* denotes the members of the 'house' and their belongings. Cf. Num. 16:27, 32; Deut. 11:6; cp. Gen. 15:2; 42:19, 33; 45:18; Ex. 20:17, et al.

the sequel, the rebellion in this case was confined within a comparatively small circle. Any charge against the integrity of Israel's leader would be misdirected, inasmuch as the civil ruler, attacked by Dathan and Abiram, had not been guilty of receiving bribes. As a further vindication of their leader, the elders of Israel accompany Moses in order to witness the punishment of the rebellious Reubenites. This punishment, it will be noted, involved the entire households and the property of the offenders, thus reminding us of the fate of Achan, the son of Carmi, concerning whom we read, 'And Yahwe said to Joshua, Israel has sinned, and they have also transgressed my covenant which I commanded them, for they have taken some of the devoted things, and stolen, and dealt deceitfully, and put the devoted things among their own goods. Arise! purify the people and say, Purify yourselves for to-morrow, for thus saith Yahwe: In the morning ye shall present yourselves tribe by tribe; the tribe which Yahwe takes<sup>1</sup> shall present itself clan by clan; and the clan which Yahwe takes shall present itself house by house, and the house which Yahwe takes shall present itself man by man'<sup>2</sup>. Accordingly the lot fell in succession upon the tribe of Judah, the clan of the Zarhites, the house of Zabdi, and finally upon Achan, the son of Carmi. This passage furnishes an instructive example of tribal organization, the series being as follows: tribe-clan-household-individual. The same organic series is found in the first chapter of the book of Numbers, where the twelve tribes of Israel are numbered by their clans and fathers' houses, the aim of the census being to ascertain the number of adult males<sup>3</sup>. Again, the land of Canaan shall be allotted among the Israelites tribe by tribe, clan by clan, and then, by implication, to the heads of households within the clan, the size of each allotment corresponding to the numerical strength of the several tribal divisions<sup>4</sup>. So again, in 1 Samuel 10:20—21, where Saul is chosen king by the casting of lots. 'So Samuel brought all the tribes of Israel near, and the tribe of Benjamin was taken. Then he brought the tribe of Benjamin near by their clans, and the clan

1) by the sacred lot. 2) Josh. 7:10, 11, 13, 14. 3) 1:20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42. 4) 26:53—56; 33:54; Josh. 13—21. Cp. Judg. 21:25.



of the Matrites was taken; and he brought near the clan of Matri man by man<sup>1</sup>, and Saul, the son of Kish, was taken.' Saul, according to 1 Samuel 9:1, belonged to the household of Kish, 'the son of Abiel, the son of Zeror, the son of Becorath, the son of Aphiah, a wealthy Benjamite.' The aged seer, recognizing in him a man of princely qualities, exclaims, 'To whom belongeth all that is desirable in Israel? Doth it not belong to thee, and to thy father's house? And Saul answered and said, Am I not a Benjamite, of the smallest of the tribes of Israel, and is not my clan the most insignificant of all the clans of the tribe of Benjamin?'<sup>2</sup> In Judges 6:11ff. Yahwe's messenger appears to Gideon and commissions him to deliver Israel from the incursions of the Midianites. 'But he replied, I pray, sir, how should I deliver Israel? My clan<sup>3</sup> is the poorest in Manasseh, and I the least in my father's house.' It will be observed that no fixed order is rigidly adhered to in the enumeration of these groups. The description of the various tribal units sometimes commences with the tribe and sometimes with the father's house, or household. The relation of the various groups to one another may be expressed thus: all Israel consists of a number of tribes, a tribe of several clans, which were again subdivided into households, and from these households come sons representing individuals. However, it must be borne in mind at the very outset that the Hebrew tribal system is concerned with the tribal group, the clanship, and the household rather than with the individual as such. The individual, as we have seen, is reached through the tribe and its subdivisions, and vice versa. His welfare is intimately bound up with that of the tribal group. He is reckoned with only in so far as he is a member of some definite group. 'In that stage of society', says Mc Curdy, 'the solidarity of the social unit was a much more obvious thing than the individuality of its several members. Indeed, the notion that the members of the kin formed by themselves an undivided life lies at the very foundation of tribalism<sup>4</sup>.'

The father's house<sup>5</sup>, variously rendered 'sept'<sup>6</sup>, 'household', 'family', was the primal unit of organization. But the ancient

1) So Gk. 2) 1 S. 9:20, 21. 3) Lit., 'thousand'. 4) *Hist. Proph. Mon.*, vol. III, p. 84. 5) *bet-ab*, pl. *bet-abot*. 6) Gen. 41:51: 47:12. See above, page 1, note 2.

Hebrew 'family', as already intimated, was a larger and more heterogeneous aggregation than the modern family. It stood under the control of the eldest male ascendant, and consisted of the children of the patriarch by his wives of full and secondary rank, of the wives and children of his sons, and of outsiders who had been incorporated into the body by the expedient of adoption<sup>1</sup>. The *bet-ab*, or father's house, is an ancient concept<sup>2</sup>. Though gradually overshadowed by the kingship, it acquires a new political significance in the post-exilic period<sup>3</sup>.

Next in the ascending scale is the clan, called *mishpaha*<sup>4</sup>, which occupies an intermediate position between the household and the tribe. Another term used for the same organization is *elep*, 'thousand'. According to the prevalent view, the assumption is that the average clan numbered about a thousand souls, and hence the appropriateness of the designation, 'thousand'. The numerical aspect of the word points in the direction of military terminology<sup>5</sup>. There is a strong presumption, however, that Hebrew *elep* is derived from a verbal root meaning 'to bind together'<sup>6</sup>, 'to associate', 'to unite'. The *elep*, then, would be an association of households, united by common interests. The household had its father, and the clan had its chieftain, or leader<sup>7</sup>, who probably coincided with the head of the strongest and most aggressive household. With the coalescence of households into clans, a portion of the patriarchal authority which existed in the individual household was necessarily transferred to the clan group. In many instances Hebrew *elep* corresponds to a tribal subdivision, or clan. To the messenger of Yahwe, Gideon replies, 'How should I deliver Israel? My *elep* is the poorest in Manasseh, and I the least in my father's house<sup>8</sup>.' *Elep*, in this passage, doubtless refers to the clan of the Abiezrites<sup>9</sup>. In 1 Samuel 10:19 the Israelites present themselves by their tribes and by their

1) *Soc. Leg. Prim. Sem.*, pp. 85ff. 2) Gen. 12:1; 20:13; 24:23; 41:51; 47:12. 3) Ezra 1:5; 2:68; 8:1ff.; Neh. 7:70, 71. 4) Gk. *phratia*, Lat. *gens*. 5) 1 S. 17:18; 18:13; 2 S. 18:1. Cf. Nowack, *Heb. Arch.*, I, 300, note 1. 6) Cp. Ass. *ulapu*, 'band'. Gesenius, *H.W.B.* (1905), 39. 7) The term *allup*, 'leader of a thousand', is used almost exclusively of the clan-chiefs of Edom. Gen. 36:15—19, 21, 29, 30, 40—43; 1 Chron. 1:51—54; Zech. 9, 7; 12:5—6. 8) Judg. 6:15. 9) See below, page 98, note 2.



'thousands', but it is expressly stated that 'the tribe of Benjamin drew near by their clans' <sup>1</sup>. Apparently *elep* and *mishpaha* are synonymous terms. Lastly, there is to be added under this head the word *hayy* <sup>2</sup>, which evidently signifies 'sept', 'clan'. It occurs in 1 Samuel 18:18, where David objects that he should become the king's son-in-law, 'Who am I, and what is my *hayy*, my father's clan' <sup>3</sup> in Israel?'

The clan was an association of brothers, united by ties of blood, real or assumed, and holding together for offensive and defensive purposes. Within the clan all are brothers, and thus on a footing of equality. The individuals composing the group were treated as parts of one common life. No member of the clan could be touched without all the members suffering. In Judges 8:19 Gideon avenges the death of his kinsmen, because 'they were my brothers, my mother's sons'. Abimelech counts on the support of his mother's clansmen who cannot ignore the claims of blood relationship, 'Remember, moreover, that I am your bone and your flesh, and the Shechemites were persuaded to follow Abimelech, for they said, He is our brother' <sup>4</sup>. In this connection it is interesting to note that the word 'flesh' is elsewhere equated with 'clan' <sup>5</sup>.

Clan organization existed from the earliest times as a vital factor in the religious and social life of the ancient Hebrews. Says the patriarch to Eliezer, his steward, 'Thou shalt take a wife for my son of my clan, and of my father's house' <sup>6</sup>. The Israelites in Goshen are in the clan stage of social integration. In Numbers 11:10 Moses 'heard the people weep clan by clan'. The invading Israelites long retained their clan organization. The clan group is a great political factor in the period of the Judges <sup>7</sup>. It is still a vital factor in the days of Elisha <sup>8</sup>. Subsequently little is heard of the clan as an organic unit until the exile. The old civil organization was preserved by the exilic clans returning to the land of the fathers <sup>9</sup>.

1) 1 S. 10:21. Cp. Num. 1:16; 10:36; Josh. 22:21, 30; 1 S. 23:23; Mic. 5:2. 2) Ar. *hayy*, 'tent', 'encampment', 'kindred group'. 3) *mishpaha*. 4) Judg. 9:2, 3. 5) Lev. 25:49. Cp. Gen. 37:27. 6) 24:40; cp. v. 38. 7) See below, chap. III. 8) 2 K. 4:13. Cf. Gesenius, *op. cit.*, 544. 9) Ezra 2:1 ff.; Neh. 7:5 ff.; cp. Neh. 3:1 ff.; 4:13 (7).

As the clan was for all practical purposes the enlarged 'house', so the tribe<sup>1</sup> may be regarded as an expansion of the clan. The tribe comprises an aggregation of clans. It may be formed by community of blood, and geographical propinquity. Common kinship is not always insisted upon as a prerequisite to membership in the group. Thus the habit of friendly association might result in the absorption of new elements having virtually the same language and traditional customs, as in the case of the Calebite clan assimilated by the tribe of Judah<sup>2</sup>. But the bond of union was often of the most slender character. Naturally the feeling of solidarity among the members of the same clan would be more intense than among the tribe as a whole. Nothing short of the pressure of practical necessity could rouse the whole tribe to corporate action. At such times the tribe most affected was entitled to appoint a suitable chieftain, whose duty it was to summon the members of his own clan and tribe, and as many of the other tribes as would come to his assistance. The tribe and its constituent clans were always conscious of a closer mutual affinity than that obtaining among the federated tribes of pre-monarchical days. In times of peace the tribe was governed by the elders of the clans appertaining to the group. With the settlement in Canaan and the subsequent establishment of a central government, this tribal grouping necessarily underwent gradual modification, the tribe becoming a geographical rather than an ethnographical term.

The tribe was composed of clans and 'houses'. The size of the larger and smaller units of society varied considerably in the different localities, as is plain from the elasticity of the technical terms employed in the Hebrew. Thus 'the father's house' might apply to any of the tribal units, however large or small, tracing their descent from a common ancestor. It is sometimes equated with the clan<sup>3</sup> and tribe<sup>4</sup> alike. Similarly the designation 'clan' is used in the sense of 'tribe'<sup>5</sup>, and vice versa<sup>6</sup>. Finally, the Hebrew term for clan was elastic enough

1) *shebet*, or *matteh*.

2) Num. 13:6, 30; 32:12 (cp. Gen. 35:11); Judg. 1:12-15; 1 S. 25:3; 30:14; 1 Chron. 2:3-5, 18. Cp. 1 S. 27:10; 30:29.

3) Ex. 6:14ff.; Num. 3:30, 35; 1 Chron. 24:6. 4) Num. 17:2 (17); 31:26; Josh. 14:1; 22:14.

5) Judg. 13:2; 17:7! 18:2 (LXX: *mishpachotam*); 18:11, 19. 6) Num. 4:18; Judg. 18:11, 19; 20:12; 1 S. 9:21.

to include the entire nation<sup>1</sup>. It is hardly necessary to observe that the tribe and its subdivisions were in a state of constant flux.

## Chapter II

### Tribal Solidarity and Religion

The various forms of social integration in early Israel, — the nation, the tribe, the clan, the household, are a religious, political, social, and economic unity. Religion<sup>2</sup> in point of fact is co-extensive with life, no distinction being made between the religious and the secular. As a matter of historical interest it may not be amiss to state that the feeling of solidarity presumably took its rise in the ancient household, which was the primary unit of organization. But with the growth of a more complex organism, the idea of collective responsibility was gradually extended to the clan, to the tribe, and finally to the nation.

For the sake of clearness it will be well to examine in detail a number of passages relating to the more practical aspects of the Hebrew conception of solidarity.

In the realm of religion, to begin with, God calls Abram and blesses him, saying, 'Get thee out of thy country, and from thy sept, and from thy father's house, unto a land that I will show thee. I will make of thee a great nation, and I will bless thee, and make thy name great. Thou shalt be a blessing for in thee shall all nations<sup>3</sup> of the earth be blessed. So Abram departed as Yahwe had spoken unto him'<sup>4</sup>. At Shechem 'Yahwe appeared unto Abram, and said, Unto thy seed will I give this land'<sup>5</sup>. Before taking up his abode in the vicinity of Hebron, Abram is told that the land is to be given to him and to his seed in perpetuity<sup>6</sup>. That the patriarch and his descendants are

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1) Am. 3:1—2; Mic. 2:3 (Judah); Jer. 33:24 (Judah and Ephraim). Cp. Gen. 10:5, 18, 20, 31, 32; Jer. 1:15; 25:9; Ezek. 20:32; Nah. 3:4; Zech. 14:17 ff.; Ps. 22:27 (28). 2) Religion, in a sense, is the mother of all the sciences. Robertson Smith (*Rel. Sem.*<sup>1</sup>, p. 47) remarks, "The original religious society was the kindred group, and all the duties of kinship were part of religion." 3) 'clans'. 4) Gen. 12:1—4. 5) v. 7. 6) 13:5.

inseparable is clear from God's covenant relation with Abram<sup>1</sup>. The provisions of this covenant are subsequently renewed and made perpetual. 'I will establish my covenant between me and thee and thy seed after thee generation by generation for an everlasting covenant to the intent that I may be thy God and to thy seed after thee. And I will give unto thee, and to thy seed after thee, the land of thy pilgrimage, all the land of Canaan, for an everlasting possession; and I will be their God'<sup>2</sup>. Accordingly, Abraham's seed becomes the recipient of the patriarch's blessing; the latter being transferred to Isaac. 'I will be with thee, and will bless thee; for unto thee, and unto thy seed, I will give all these lands, and I will perform the oath which I swear unto Abraham, thy father, inasmuch as Abraham obeyed my voice'<sup>3</sup>. From Gerar, Isaac went to Beersheba, where 'Yahwe appeared unto him and said, I am the God of Abraham, thy father. Fear not; for I am with thee, and will bless thee, and multiply thy seed for my servant Abraham's sake'<sup>4</sup>. The blessing of Isaac in turn is conferred upon Jacob and upon his descendants. 'And Isaac called Jacob and said unto him, God give thee the blessing of Abraham, to thee and to thy seed with thee, that thou mayest inherit the land of thy pilgrimage, which God gave unto Abraham'<sup>5</sup>. God reveals himself to Jacob at Bethel, saying, 'I am Yahwe, the God of Abraham, thy father, and the God of Isaac. The land whereon thou liest, to thee will I give it and to thy seed'<sup>6</sup>. Seeing the distresses of the patriarch's descendants in Egypt, 'God remembers his covenant with Abraham, with Isaac, and with Jacob . . . Wherefore say unto the children of Israel, I will bring you into the land, concerning which I lifted up my hand to give it to Abraham, to Isaac, and to Jacob'<sup>7</sup>. Yahwe's affectionate regard for the patriarchs is often referred to as the underlying motive for his dealings with their descendants<sup>8</sup>. Thus the worshippers of the golden calf are spared of God by the intercession of Moses, the latter calling attention to the existence of a covenant concluded in patriarchal times. 'And

1) 15:8. 2) 17:7—8; cp. 6:18; 7:1, 13; 8:16, 18; 9:9, 12; 24:7.

3) 26:3, 5; cp. 12:4; 15:6; 22:16, 18. 4) 26:24. 5) 28:1, 4. 6) 28:13; cp. 31:3, 5, 13, 42; 32:9; 35:12; 48:15—16. 7) Ex. 2:24 (6:5); 6:8.

8) Frequent mention is made of 'the God of the fathers.' 3:6, 13, 15, 16, et al.

Moses besought Yahwe, and said, Remember Abraham, Isaac, and Israel, thy servants, to whom thou swarest by thine own self, and saidst unto them, I will multiply your seed as the stars of heaven, and all this land that I have spoken of will I give unto your seed, and they shall inherit it forever. And Yahwe repented of the evil which he thought to do unto his people<sup>1</sup>. Leviticus 26:40ff relates to the promised restoration of the penitent exiles in virtue of God's covenant relation with the forefathers of the nation. 'Then will I remember my covenant with Jacob, and also my covenant with Isaac, and also my covenant with Abraham will I remember; and I will remember the land, for the land shall be deserted by them. When they are in the land of their enemies, I will not destroy them utterly<sup>2</sup>, thus breaking my covenant with them. But I will for their sake remember the covenant with their ancestors, whom I brought out of the land of Egypt in the sight of the nations, that I might be their God'. Jerusalem, in the days of Ezekiel is a city of covenant-breakers. 'Nevertheless I will remember my covenant with thee in the days of thy youth, and I will establish with thee an everlasting covenant, and thou shalt know that I am Yahwe'<sup>3</sup>.

The conception of solidarity in Israel was such as to necessitate the selection by Yahwe of the nation as a whole<sup>4</sup>. 'Enter into covenant with Yahwe, thy God, and into his oath, which Yahwe maketh with thee this day, that he may establish thee this day unto himself for a people, and that he may be thy God, as he spake unto thee, and as he swore unto thy fathers, to Abraham, to Isaac, and to Jacob. And not with you only do I make this covenant and this oath' but also with the Israelite of future

1) 32:13—14; cp. Deut. 9:26ff. 2) 'But Yahwe was gracious to them, and turned again to them because of his covenant with Abraham, Isaac, and Jacob, and would not destroy them, nor as yet cast them from his presence.' 2 K. 13:23. 3) 16:60, 62. 4) The nation is not infrequently represented as Yahwe's son. In Ex. 4:22—23, Israel is 'my first-born son.' Cp. Num. 11:12; Deut. 1:31; 8:5; 32:18. Hosea observes, 'When Israel was young, then I loved him, and called my son out of Egypt' (11:1). Jeremiah writes, 'I have become a father to Israel, and Ephraim is my firstborn . . . Is Ephraim a favorite son, or a delightful child that I should keep thinking of him whenever I speak of him?' (31:9, 20; cp. 3:19). Compare also the references to Jacob-Israel, the servant; Isa. 41:8; 43:10; 44:1, 2, 21.



generations<sup>1</sup>. Israel's divine election is in direct line with God's promise to the forefathers. But this covenant-keeping faithfulness of God involves a like obligation on the part of the chosen seed. Israel as a nation shall be consecrated to Yahwe, ready to prove its fidelity by obedience to his voice. 'I will accept you as my people, and be your God . . . Now therefore, if ye will obey my voice indeed, and keep my covenant, then ye shall be my special possession from among all peoples — for all the earth is mine — and ye shall be unto me a kingdom of priests and a consecrated nation'<sup>2</sup>. This national aspect of Israel's religion finds eloquent expression in the twenty-eighth chapter of Deuteronomy<sup>3</sup>. It is the nation, rather than the individual, that is the object of the blessings and maledictions attendant upon Israel's observance or neglect of the divine law. 'Yahwe will establish thee as a people consecrated to himself, as he hath sworn to thee, if thou wilt keep the commands of Yahwe, thy God; and walk in his ways. Yahwe, thy God, will set thee on high above all nations of the earth'. In the event of obedience, Israel may expect an era of general prosperity in every department of national life. The blessings specified are Yahwe's favor, prosperous seasons, abundant offspring of men and cattle, victory against foes, and the respect of the world. The penalties for disobedience, on the other hand, spell national disaster and ruin. They are even more copious and detailed than the blessings already enumerated. It will suffice to mention the following: divine retribution, exhausting droughts, failure of crops and famine, plague and pestilence, accompanied by great mortality in all walks of life, incurable diseases of body and mind, resulting from foreign invasion in all parts of the land, and ignominious exile for the survivors of the nation. All these maledictions, the writer adds, shall cling to Israel and its posterity forever.

In view of Israel's solidarity the merits of part of a group, however large or small, may be applied to the group as a whole. Thus ten righteous men will suffice for the preservation of Sodom. 'Abraham stood before Yahwe, and said, Wilt thou

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1) Deut. 29:12—15.      2) Ex. 6:7; 19:5—6; cp. Deut. 4:20, 37; 7:6ff.; 10:15; 14:2; Ps. 147:19—20; Rom. 11:28.      3) Cp. Ex. 23:20—33; Lev. 26:3—45.

also destroy the righteous with the wicked? Far be it from thee to slay the righteous with the wicked. Peradventure there shall be ten found there. And Yahwe said, I will not destroy it for ten's sake'<sup>1</sup>. The emphasis in the present narrative is on the significance of a pious minority in the midst of a guilty community. It is simply the obverse of the belief in the transmissibility of guilt, infecting and incriminating the entire social organism to which the offender belongs, and not the product of speculative thought tending in the direction of individualism<sup>2</sup>. From the viewpoint of Hebrew solidarity, there is no essential difference, except one of degree, between the preservation of a household, and that of a community of kinsmen. Hence it is taken for granted that if God has determined to spare Lot, he will likewise, as a matter of course, save from destruction the entire household, composed of Lot and his wife, of his two daughters, and of his prospective sons-in-law. It is of special interest to note that the question of the divine messengers points to the possible inclusion of a still larger circle. 'The men said unto Lot, Hast thou here any besides? As for thy prospective sons-in-law, and thy daughters, and thy entire following<sup>3</sup> in the city, bring them out of this place'<sup>4</sup>. Similarly, God will spare the entire community for the sake of ten men who are righteous. Now if the ultimate fate of Sodom and Gomorrah<sup>5</sup> depends upon a comparatively small number of men who are righteous, will he not for the sake of a righteous man spare a whole city? If in the light of Genesis 12:3 'all nations of the earth are to be blessed in Abram', it is but reasonable to suppose that God will spare a city for the sake of one of his servants. Addressing Hezekiah, the king, Isaiah says, 'Thus saith Yahwe, the God of David, thy father, I will deliver thee and this city from the hand of the King of Assyria, and I will defend this city for mine own sake and for my servant David's sake . . Now that night the messenger of Yahwe went forth and smote in the camp of the Assyrians a hundred and eighty-five thousand'<sup>6</sup>. Sennacherib,

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1) Gen. 18:22, 23, 25, 32. 2) Procksch, *Gen.*, 118—119. Contra, Gunkel, *Gen.*, 204—205; see also Löhr, in *Zeitschrift f. d. alttest. Wiss.*, Beiheft X (1906), 13, 27. 3) So Procksch. 4) Gen. 19:12. 5) 18:20; 19:24, 28. 6) 2 K. 20:5—6; 19:35.



with a remnant of his army, subsequently returned to his own country, leaving Jerusalem intact. So in the days of Jeremiah, God will pardon Jerusalem if a righteous man be found in it. 'Run ye to and fro through the streets of Jerusalem, and seek in the broad places thereof, if ye can find a man, if there be any that doeth what is right<sup>1</sup>, that seeketh faithfulness, and I will pardon it'<sup>2</sup>. Ezekiel points to a like possibility, provided there be found among the inhabitants of Jerusalem one who would stand in the breach on behalf of the people, but, alas, the search for one is vain. 'I sought for a man among them, that should raise up a wall, and stand in the breach before me for the land, that I should not destroy it, but I found none'<sup>3</sup>.

What is true of the city in this respect is true also of the nation, for the nation as such has a solidarity in virtue of which the merits of a part of the nation will stay from the rest of the nation the hand of divine justice. It is related, for instance, that the Israelites, having provoked by their apostasy Yahwe's anger, had assembled before the tabernacle, bemoaning their punishment. The plague, however, is stayed by the zeal of Phinehas, who makes atonement for the Israelites. 'And behold, one of the Israelites came and brought home to his kinsmen a Midianite woman in the sight of Moses and of all the congregation, while they were weeping at the door of the tent of meeting. And when Phinehas, the son of Eleazar, the son of Aaron the priest, saw it, he rose up from the midst of the congregation and took a spear in his hand, and pursued the man of Israel into the inner apartment (of his tent) and pierced the body of both the man of Israel and of the woman. Then the plague was stayed from the children of Israel. And those who died of the plague were twenty-four thousand. And Yahwe spake to Moses, saying, Phinehas in his zeal for my cause hath turned away my wrath from the children of Israel so that I did not consume in my zeal all the children of Israel. Wherefore say, Behold I give unto him my covenant of peace; and it shall be to him and his

1) *mishpat*. By *mishpat* is meant the customary, morality, or social justice obtaining from time immemorial. 2) 5:1. 3) 22:30; cp. 13:5; Ps. 106:23. See also Isa. 53:4 ff.; Rom. 5:14—21; 2 Cor. 5:14—21; Gal. 3:13 ff.; 1 Pet. 2:21—25; 1 John 3:5.

descendants after him the covenant of an everlasting priesthood; because he was zealous for his God and made atonement for the children of Israel<sup>1</sup>. According to Isaiah 65:8, the nation shall be saved for the sake of a faithful few, 'Thus saith Yahwe, As the new wine is found in the cluster, and one saith, Destroy it not, for a blessing is in it, so will I do for the sake of my servants, that I may not destroy the whole (nation)'. The blessings of divine mercy are not limited to Yahwe's faithful servants. On the contrary, they are diffused upon those belonging to, or connected with them, whether by religious, domestic, or national ties. God's mercy, in all such cases, transcends his righteous wrath. 'For I, Yahwe, thy God, am a jealous God, visiting the iniquity of the fathers upon the children, upon the third<sup>2</sup> and fourth<sup>3</sup> generation belonging to them that hate me; and showing mercy unto a thousand generations<sup>4</sup> belonging to them that love me, and keep my commandments'<sup>5</sup>.

That 'the iniquity of the fathers is visited upon the children' is attested by numerous passages. The posterity of the wicked 'shalt thou destroy from the earth, and their seed from the children of men . . . The seed of the wicked shall be cut off . . . Let the iniquity of his fathers be remembered with Yahwe'<sup>6</sup>. It will be observed, in passing, that the Ammonite and the Moabite are forbidden to enter, even to the tenth generation, the congregation of Yahwe, owing to the unfriendly conduct of their ancestors toward the Israelites at the time of the exodus<sup>7</sup>. Greatly impressed by the discovery in the temple of the book of the law, king Josiah exclaims, 'Great is Yahwe's wrath that is kindled against us, because our fathers have not hearkened unto the words of this book'<sup>8</sup>. Punishment is inflicted upon posterity for the sins of the fathers as well as for their own. 'Ye shall perish among the nations, and the land of your enemies shall eat you up. And those who remain shall waste away for the iniquities of their fathers as well as for their own'<sup>9</sup>. There are

1) Num. 25:6--13; cp. 16:46--50.      2) grandchildren.      3) great grandchildren.  
 4) lit., 'thousands'; but see Deut. 7:9.      5) Ex. 20:5--6; Deut. 5:9--10; cp. Ex. 34:6--7; Num. 14:18; Deut. 30:19--20.  
 6) Ps. 21:10; 37:28; 109:14; cp. Jer. 22:30; Lam. 5:7.      7) Deut. 23:2--4; cp. Ex. 17:16; Isa. 14:20--22; Jer. 2:9.      8) 2 K. 22:13 (2 Chron. 34:21).  
 9) Lev. 26:38--39.

those who seek satisfaction in idolatrous practices, but 'their iniquities and the iniquities of their fathers together will I measure into their bosom'<sup>1</sup>.

The iniquity of the fathers consists, as we shall see presently, in blood-guiltiness, in adultery, and in apostasy.

As the guardian of social custom, Yahwe protects and defends the primitive law of blood-vengeance. Blood innocently shed calls for divine vengeance, especially in default of a human avenger. 'Yahwe said unto Cain, The voice of thy brother's blood crieth to me from the ground. Now, therefore, cursed art thou. Whenever thou tillest the ground<sup>2</sup>, it shall no longer yield to thee its strength; a fugitive and a wanderer shalt thou be on the earth'<sup>3</sup>. The shedding of blood, whether from malice or by accident, defiles the land. 'Ye shall not pollute the land, for blood especially polluteth the land'<sup>4</sup>. Deuteronomy 19:8—10 specifies that in the event of Israel's enlargement three additional cities of refuge be established, lest 'innocent blood be shed in the midst of thy land, which Yahwe thy God is giving thee as an inheritance, and thus blood-guilt be upon thee'. The land of Israel must be kept free from pollution<sup>5</sup>, particularly from pollution caused by the shedding of blood. 'For Yahwe will avenge the blood of his servants, and clear from guilt his land, (and) his people'<sup>6</sup>. Such pollution was a source of great danger to the community. The law of Deuteronomy relating to the expiation of an untraced murder, affords a good illustration of the old idea of communal liability. Immediate responsibility for the crime rests upon the city nearest to the spot where the corpse was found. The solemn ceremonial disavowal of the crime by the elders of that city is an essential part of the rite of expiation. The city nearest to the scene of the murder having been duly ascertained by accurate measurements, the elders of the nearest city 'shall take from the herd a heifer which hath done no work nor drawn in the yoke; and the elders of that city shall bring down the heifer to a perennial brook, and shall break the heifer's neck there by the brook. And the priests, the sons of Levi,

1) Isa. 65:7; cp. Num. 14:33. 2) Cp. Gen. 3:17—19. 3) 4:10—12.

4) Num. 35:33; cp. Ps. 106:38. 5) Cp. Deut. 21:23; Mic. 2:10; Jer. 2:7.

6) 'the land of his people' (so Gk. and Lat.), Deut. 32:43.

shall come near; for them Yahwe thy God hath chosen to minister unto him, and to bless in the name of Yahwe, and according to their pronouncement shall be decided every controversy and every assault. And all the elders of that city which is nearest to the slain man shall wash their hands<sup>1</sup> over the heifer, and shall say, our hands have not shed this blood, neither have our eyes seen it. O Yahwe, clear from guilt thy people Israel, which thou hast ransomed, and set not the guilt for innocent blood in the midst of thy people Israel. And their blood-guilt shall be expiated. Thus shalt thou put away from thy midst blood shed innocently'<sup>2</sup>. The above instructions must be scrupulously complied with, if Israel is to clear itself of the guilt resting upon it. Failure to do so will result in calamity. After the death of Saul, Abner sought to perpetuate the dynasty of his royal cousin by crowning Ishbaal king over Israel. Civil war ensued, Abner leading the army of Saul, and Joab the forces of David. Abner was defeated at Gibeon and started to retreat. Asahel, Joab's brother, pursued Abner, intent upon meeting the great warrior in single combat. The result was that Abner finally accepted the challenge and slew him. Later, Ishbaal quarrelled with Abner over the disposition of Rizpah, Saul's concubine. Resenting the king's ingratitude, Abner opened negotiations with David looking to the transfer of Israel's allegiance. A treaty is concluded at Hebron in the absence of Joab. Upon his return, he is informed of what has been done, and Abner is recalled by a pretended message from King David. Joab met him at the gate of Hebron and slew him in revenge for the death of Asahel, despite the fact that Abner had left the presence of the king 'in peace'. David, protesting his innocence, solemnly declares, 'I and my kingdom are forever innocent before Yahwe of the blood of Abner. Let it come upon Joab, and upon all his father's house'<sup>3</sup>. Joab was guilty of avenging 'the blood of war in (time of) peace'<sup>4</sup>. The shedding of innocent blood must be avenged. David, however, hesitated to break with the powerful chieftain. It is for this reason that the duty and obligation of blood-vengeance devolves upon Solomon who is enjoined not to let 'Joab's hoary head go

1) Cp. Ps. 26:6; 76:13; Mtt. 27:24—25.  
28—29. 4) 1 K. 2:5.

2) 21:3—9.

3) 2 S. 3:

down to Sheol in peace'<sup>1</sup>. The slaying of a covenant ally, although prompted by the best of motives, is an impious offense, calling for expiation. From Joshua 9:3ff. we learn that the town of Gibeon and three other allied towns in the immediate vicinity had secured a treaty of peace by which they came under the protection of the God of Israel. At a subsequent date, Saul, acting under a patriotic impulse, made an unsuccessful attempt to extirpate the Gibeonites. Saul's aggressions in this particular instance led to a three years' famine. 'And David sought the face of Yahwe, and Yahwe answered, Upon Saul and upon his house there is blood-guilt, because he put to death the Gibeonites. And the king called the Gibeonites, and said unto them, What shall I do for you, and wherewith shall I make expiation, that ye may bless the heritage of Yahwe?'<sup>2</sup> The reply of the Gibeonites shows that it is not a question of the payment of blood-money, nor of the indiscriminate application of the law of blood-revenge in Israel at large. Their request is that in lieu of Saul himself certain members of his house be delivered to them. 'As for the man who consumed us, and who planned to destroy us that we should not remain in any of the borders of Israel, let seven men of his sons be given us, and we will expose<sup>3</sup> them before Yahwe. And the king said, I will give them . . . After this God had compassion upon the land'<sup>4</sup>. How many Gibeonites had been slain, is not stated. It is worthy of observation, however, that God as the avenger of a broken covenant requires from the descendants of the culprit the blood that has been shed. In this case seven descendants of the house of Saul suffer death for the misdeeds of their royal grandfather. Similarly, Hosea announces God's punishment upon the northern kingdom for the sins of one of its kings. 'I will avenge the blood of Jezreel upon the house of Jehu, and will cause the kingdom of the house of Israel to cease'<sup>5</sup>. Judah, according to 2 Kings 24:4, shall wander into exile 'because of the innocent blood' which had been shed by Manasseh. Jeremiah, conscious of the evil designs of his enemies at Jerusalem, adverts to the far-reaching, incriminating conse-

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1) v. 6      2) 2 S. 21:1-3.      3) hang(?).      4) vv. 5, 6, 14.      5) 1:4.  
The prophet, it appears, could not fully endorse the cult of Jehu and of his descendants.



quences attending his prospective execution. Replying to his accusers, the patriotic prophet observes, 'But as for me, behold, I am in your hand; do with me as appears to you to be good and right. Only be assured that if ye put me to death, ye bring the guilt for innocent blood upon yourselves, and upon this city, and upon its inhabitants' <sup>1</sup>. The whole land is full of oppression and judicial violence, 'The iniquity of the house of Israel and of Judah is exceedingly great, and the land is filled with blood, and the city is full of injustice; they think that Yahwe has left the land, that Yahwe does not see' <sup>2</sup>. Another source of widespread defilement is the blood of children offered to idols. 'When the house of Israel dwelt in their land, they defiled it by their ways and their deeds; in my sight their ways were like the uncleanness of menstruation' <sup>3</sup>. Wherefore I poured my fury upon them for the blood which they had shed in the land, and because they had defiled it with their idols' <sup>4</sup>.

As regards adultery, the consciousness of solidarity is equally pronounced. An instructive example is found in Genesis 20:1—18, where Yahwe appears to Abimelech, the king of Gerar, saying, 'Thou must die because of the woman whom thou hast taken; for she is already married. But Abimelech had not come near her, and he said, Lord <sup>5</sup>, wilt thou indeed slay an innocent nation? Said he not unto me, She is my sister? and she, even she herself said, He is my brother. In the simplicity of my heart and innocency of my hands have I done this . . . Then Abimelech called Abraham, and said unto him, What hast thou done unto us? <sup>6</sup> and wherein have I sinned against thee, that thou hast brought on me and on my kingdom so great a sin?' <sup>7</sup>. Abimelech and his people are inseparable; hence the guilt of the former is shared by the latter <sup>8</sup>. The deception of Isaac, recorded in Genesis 26:6—11, is met with the complaint, 'What is this thou hast done unto us? How easily one of the people might have cohabited

1) 26:14—15; cp. Ezek. 22:2; Jon. 1:14.

2) Ezek. 9:9. Hosea

says, 'Deeds of violence, and acts of bloodshed follow in quick succession. Therefore the land mourns, and all its inhabitants languish.' 4:2—3.

3) Cp. Ezek. 18:6; 22:10.

4) 36:17—18; cp. 16:20, 21, 36; 22:4, 6; 23:37, 45; 33:25.

5) 'Yahwe', so in a large number of manuscripts.

6) 'What have I done unto thee?' (Syriac version).

7) vv. 3—5, 9.

8) Cp. Gunkel, *op. cit.*, 222.

with thy wife, and thou shouldest have brought guiltiness upon us! Whereupon Abimelech charged all his people, saying, He that toucheth this man and his wife shall surely be put to death'. Obviously, Abimelech believed that guilt thus incurred spread as by infection to the whole nation. How imperative, therefore, the duty of guarding against such a contingency! In the moral economy of Israel proper, there is the analogous thought of Leviticus 18:23—25, according to which sexual excesses and unnatural unions may defile the land. 'Defile not yourselves in any of these things, for in all these things the nations, which I am casting out before you, defiled themselves; thus the land became defiled, and I visited its iniquity upon it, and the land vomited forth its inhabitants'. Furthermore, a divorced woman, after contracting a second marriage, could not be taken back by her former husband, second marriages of this type falling into the same category as adultery<sup>1</sup>. The land is in danger of incurring the guilt and consequences of such sinful acts, 'for that is an abomination before Yahwe, and thou shalt not involve in guilt the land which Yahwe thy God is giving thee as an inheritance'<sup>2</sup>.

Infidelity, whether in the sphere of morality or of religion, defiles the land. Hosea complains, 'I have seen an horrible thing in the house of Israel; there is the harlotry of Ephraim, Israel is defiled . . . Yea, thou, O Ephraim, hast committed harlotry, and Israel is defiled'<sup>3</sup>. Yahwe's relation to Israel, according to the prophet, is not unlike that of a marriage-covenant<sup>4</sup>. Israel, the wife, has from the very beginning of her national life been the object of God's love and care. But the wife in this case proves unfaithful, deserting for her paramours the husband of her youth. Israel's estrangement from Yahwe is followed by drought, and famine. 'There is no fidelity, and no true love, and no knowledge of Yahwe in the land; there is nought but breaking faith, and killing, and stealing, and committing adultery. Therefore the land mourns, and all its inhabitants languish'<sup>5</sup>. The nation is doomed not only economically but also politically, 'for the evil of their doings I will drive them out of my house'<sup>6</sup>, and they

1) Cp. Mt. 5:32.

2) Deut. 24:4; cp. Jer. 3:1.

3) 6:10; 5:3.

4) 2:1ff. (cp. Ezek. 16 and 23); 3:1ff.; 6:7.

5) 4:1—3; cp. 9:14.

6) The house here is the land of Israel.



shall become wanderers among the nations' <sup>1</sup>. Israel's worship of the true God has suffered by the admixture of Baalism representing the local Canaanitish gods of fertility. The prominence of sexual rites in the cult of that nature religion may be inferred from the prostitution of its devotees. 'The spirit of harlotry has led them astray, so that they have played the harlot (and become) disloyal to their God. Upon the tops of the mountains they sacrifice, and upon the hills they burn their offerings, under oaks and poplars and terebinths . . because their shade is so pleasant. Therefore your daughters play the harlot, and your brides commit adultery. A stupid people, indeed, alling to ruin' <sup>2</sup>. Manifestly the sacrifice of one's virtue was generally looked upon as a religious act. That the licentiousness and degrading sensuality of a popular religion, centering in the worship of the life-giving principle associated with the local deities, had a most disastrous effect upon social morality, is only too obvious <sup>3</sup>. Hosea's domestic tragedy may be traced to the immoral atmosphere of the local sanctuaries. The second child of this union is called 'She is not pitied', for 'I will no longer have pity for the house of Israel', the name of the third child being 'Not-my-people' <sup>4</sup>, for 'ye are not my people, and I am not your God' <sup>5</sup>. Jeremiah, quoting Deuteronomy 24:4, deals in a telling manner with the religious conditions obtaining in his own day, when he says, 'If a man put away his wife, and she become another's, shall he return to her again?' <sup>6</sup> Would not that land <sup>7</sup> be greatly polluted? And thou who hast played the harlot with many paramours, wilt thou return to me, saith Yahwe? Lift up thine eyes unto the high places, and see where thou hast not been cohabited with. In the ways thou hast sat for them; thou hast polluted the land with thy harlotry and with thy wickedness. Therefore the showers have been withholden, and there hath been no latter rain . . And although she saw that for all the causes whereby backsliding Israel committed adultery I had put her away and given her a bill of divorce, her

1) 9:15, 17; cp. 9:1—9; 13:1—11.      2) 4:12—14.      3) 1:2ff.; 3:1—3; cp. Ex. 34:15—16; Lev. 17:7; 19:29; Num. 15:39; Deut. 31:16; Judg. 2:17; Am. 2:7.      4) also, 'No-kin-of-mine'.      5) 1:6, 9; cp. 2:23; Zech. 8:8.      6) 'shall she return to him again?' (Gk).      7) 'that woman' (Gk.).

treacherous sister Judah feared not, but went and played the harlot also. She defiled the land, and committed adultery with stone and wood<sup>1</sup>.

The accountability of the nation for the sin and guilt of any of its members becomes intelligible from the point of view of group solidarity. The officiating priest, 'who has sinned thereby involving the people in his guilt', is a case in point<sup>2</sup>. In the story of Nadab and Abihu, Aaron and his sons are obliged to refrain, on pain of death, from participation in the usual mourning rites, 'lest Yahwe be angry with the whole congregation'<sup>3</sup>. The author of Numbers 16:22 raises the question, 'Wilt thou, if one man sin, be wroth with the whole congregation?' This passage is interpreted by some scholars on the basis of the later individualism. However, waiving entirely the question of date and authorship, it will be agreed that the query itself has grown out of the old doctrine of collective guilt and punishment.

Any sinful act bordering on apostasy, and committed by a member of the priestly or regal class, is a contaminating source of evil, which might involve the entire nation. In 2 Samuel 24:1ff. David proposes an enumeration of the people of Israel and of Judah. This census, it appears, was prompted primarily by a desire to ascertain the full military strength of the kingdom. 'The king said to Joab and the captains<sup>4</sup> of the army, Compass now all the tribes of Israel, from Dan even to Beersheba, and muster the people that I may know the number of the people. Then Joab answered the king, Why doth my lord the king have a desire for such an undertaking? But the king's command prevailed against Joab and the commanders of the army. . . At the end of nine months and twenty days, Joab gave to the king the number of the people who had been mustered, and there were in Israel eight hundred thousand<sup>5</sup> men capable of bearing arms; and the men of Judah were five hundred thousand<sup>6</sup>. Joab's vigorous protest implies that the census was a new and unheard-of thing, having in view the conscription of every freeholder<sup>7</sup> and a scheme of political taxation. Such an innovation would

1) 3:1-3, 8-9; cp. 2:20, 27; Isa. 1:21; Ezek. 16:1ff.; 23:1ff.

2) Lev. 4:3. 3) 10:6; cp. Baentsch, *ad loc.* 4) 'commanders', so Gk.

5) The figures in 1 Chron. 21:5 are 1,100,000 and 470,000 respectively; but compare v. 6. 6) vv. 2-4, 8-9. 7) Cp. 1 S. 8:11ff.

be commonly regarded as a great wrong, since it meant the curtailment of the old tribal rights. That the purpose of the king in this matter was equally displeasing to God is shown by the disastrous consequences following in the wake of the census. The chronicler even intimates that if the king persisted in numbering the people, great calamity would come upon the nation, for 'why should David be a cause of guilt to Israel'?<sup>1</sup> David's sinful act is followed by a pestilence of three days' duration, extending from Dan to Beersheba, 'and there fell of Israel seventy thousand men'. Yahwe now repents of the evil, and the destroying angel who was standing by the threshing floor of Araunah, is bidden to stay his hand. 'Then David built there an altar unto Yahwe, and offered burnt offerings and peace offerings. So Yahwe was entreated for the land, and the plague was stayed from Israel'<sup>2</sup>. Again, in the days of Ahab, 'there shall be neither dew nor rain these years . . . And the famine was severe in Samaria . . . The word of Yahwe came to Elijah in the third year, saying, Go, show thyself unto Ahab; and I will send rain upon the earth . . . When Ahab saw Elijah, Ahab said unto him, Art thou the person that hath brought misfortune to Israel? And he answered, I have not brought misfortune to Israel, but thou and thy father's house, in that ye have forsaken the commands of Yahwe, for thou hast followed the Baalim'<sup>3</sup>. Here, then, is a clear case of apostasy on the part of Ahab and his father's house, which results in collective guilt and punishment within the bounds of the culprit's dominions. Judah, too, is brought low because of Ahab, the king, whose idolatry was equivalent to a breach of faith toward Yahwe. It is on account of the sins of Manasseh that Yahwe's 'wrath is kindled against Judah, and Yahwe said, I will remove Judah also out of my sight, as I have removed Israel'<sup>4</sup>.

The whole nation suffers for the sins of one or a part of its members. The supposed schism of the two tribes and a half cannot remain unchallenged by the other tribes, since breach of faith against the God of Israel will result in the immediate infliction of divine punishment upon the entire community. 'If ye rebel against Yahwe to-day, to-morrow there will be wrath

1) 1 Chron. 21:3.      2) 2 S. 24:25.      3) 1 K. 17:1; 18:1, 2, 17, 18.

4) 2 K. 23:26, 27; cf. Jer. 15:4; 2 K. 21:2, 11, 16; 24:2—3.

against the whole congregation of Israel. Was not Achan, the son of Zerah, guilty of a breach of faith so that wrath fell upon the whole congregation of Israel? and that man did not perish alone in his iniquity'<sup>1</sup>.

Early Hebrew prophetism concerns itself primarily with the nation; and views the individual only as part of the nation. Amos, for example, thinks of the nation as a whole; he refers to the people of Israel in terms of kinship. The nation is simply an extension of the clan. Such a kinship group naturally has a solidarity in matters of religion and of common life. Accordingly, the benefits and penalties of Israel's relation to God receive a national application. 'Hear this word that Yahwe hath spoken against you, O house<sup>2</sup> of Israel, against the whole clan<sup>3</sup> which I brought up from the land of Egypt, saying, You only have I known of all the clans of the earth; therefore upon you first I will visit all your iniquities'<sup>4</sup>. The peculiar relation of Israel to God demands a corresponding righteousness, owing to the inseparability of morality and religion. Failure to exhibit that righteousness is bound to result in chastisement<sup>5</sup> even to the point of national destruction. 'Yahwe said unto me, Amos, what seest thou? And I said, A plumbline. Then said the Lord, Behold I am setting a plumbline in the midst of my people Israel; I will not again pass by them any more. The high places of Isaac shall be destroyed, and the sanctuaries of Israel laid waste, and I will rise up against the house of Jeroboam with the sword . . . Israel shall surely go away into captivity'<sup>6</sup>. The prophet, in his dirge over the impending fall of the northern kingdom, has in mind not an individual but the nation. 'Hear this word which I take up against you, even a dirge, O house of Israel. Fallen, no more to rise, is the virgin Israel; hurled down upon her own soil she lies, with none to raise her up'<sup>7</sup>. The cardinal sin of the time is social injustice. Among the ruling classes and great landed proprietors, there is a woeful lack of the fundamental social virtues, such as justice, and fair dealing,

1) Josh. 22:18, 20. Cp. 6:18; 22:31; Num. 16:20—22. 2) So a number of manuscripts. This reading is to be preferred to the 'sons of Israel' of the M. T. 3) *mishpaha*, 'nation'. 4) Am. 3:1—2. 5) 1:1; 4:6—12. 6) 7:8—9, 11; cp. 8:2, 7—13. 7) 5:1—2; cp. 5:16—17.

honesty, and truthfulness. But in the coming judgment the poor and innocent representing the lower stratum of society suffer alike for the sin and guilt of the upper classes. The misleaders of the nation 'must go into exile at the head of the captives, and the shout of the banqueters shall cease. I abhor the pride of Jacob, and hate his palaces. Therefore I will deliver up the city and the fulness thereof. If there be left ten men in one house, they shall die. And one shall smite the great house into fragments, and the small house into fissures' <sup>1</sup>. Thus the nation perishes because of the evil doings of a privileged class. Hosea, like Amos, is concerned with the nation rather than with the individual. He adheres, as we have seen, to the old doctrine of social solidarity. Social injustice is again the theme in the prophetic discourses of Micah, the Morashtite. In place of the rich and ruling classes of the northern kingdom, dwelling for the most part in Samaria, we now have the vested interests of Jerusalem. Samaria and Jerusalem alike shall be utterly destroyed. 'Hear ye, peoples all; hearken O earth, and her fulness. Yahwe will become a witness against you. Yea, behold! Yahwe cometh forth from his place; the mountains will melt under him and the valleys be cloven asunder. For the transgression of Jacob is all this, and for the sin of the house of Israel. What is Jacob's transgression? Is it not Samaria? And what is the sin of the house of Judah? Is it not Jerusalem? Therefore will I turn Samaria into a field. For this let me lament and wail; for her stroke is incurable. Yea, it comes even to Judah; it reaches unto the gate of my people, even unto Jerusalem' <sup>2</sup>. Micah's mission is 'to declare unto Jacob his transgression and to Israel his sin' <sup>3</sup>. The prophet specifies in detail the social crimes of a degenerate city aristocracy. 'Hark! Yahwe is calling to the city: Hear, O tribe and assembly of the city. Can I forget the treasures in the house of the wicked, and the accursed scant measure? — Hear this now, ye heads of the house of Jacob, and judges of the house of Israel; who abhor justice, and pervert all that is right; who build up Zion with blood, and Jerusalem with iniquity. Her chiefs judge for a bribe, and her priests give oracles for

1) 6:7—9, 11; cp. 3:12—15; 6:1ff.; 9:1—4.

2) Mic. 1:2—6, 8, 9.

3) 3:8.



hire, and her prophets divine for money. Therefore shall Zion for your sake be plowed as a field, and Jerusalem shall become a heap of ruins' <sup>1</sup>. Jerusalem is threatened with total destruction for the sins of its leading citizens. There is no evidence that Micah looked for the total annihilation of the people of Judah. But that the threatened destruction of Jerusalem would affect the nation is clear at least from the language of the received text as well as from the contemplated invasion of the land by the Assyrians. 'Behold, against this clan' <sup>2</sup> I am devising disaster, from which ye shall not withdraw your necks, nor walk upright, for it will be a disastrous time. In that day one shall sing this dirge: The landed portion of my people is being measured off with the measuring line, and there is no one to restore it. Our captors are dividing our fields! we are utterly devastated' <sup>3</sup>. The Hebrew equivalent for 'clan' <sup>4</sup> in this passage has reference to the people of Judah and not simply to the greedy landgrabbing urbanites concentrated in the southern capital <sup>5</sup>. Doubtless Micah expected the people of Judah to become involved in the destruction of Jerusalem <sup>6</sup>. Under the prevailing group morality system, Isaiah felt himself united with his people in an indissoluble bond. Speaking in communal-national terms, the prince of the literary prophets laments the fact that he is 'a man of unclean lips, dwelling in the midst of a people of unclean lips' <sup>7</sup>. His lips being cleansed by a glowing coal from the altar, he delivers to the people as a whole Yahwe's message of national doom. The divine commission is, Go and tell this people, Hear on, but understand not; see, yea, see, but perceive not! Make insensitive <sup>8</sup> the heart of this people, make dull its ears, and besmear its eyes. Then said I, Lord, how long? And he answered, Until cities lie waste without an inhabitant, and houses without a human occupant, and the land be left in utter desolation'. Isaiah's principal concern, despite his doctrine of the remnant, is with

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1) 6:9-10; 3:9-12; cp. 2:1-2, 8-10. 2) *mishpaha*, 'nation'.  
 3) 2:3-4. 4) The phrase, 'against this clan', is regarded by some as a scribal addition. 5) Cp. Am. 3:1; Jer. 8:3. 6) Cp. 1:9, 16; 6:2, 13-14; 7:13; 5:10. Sennacherib, according to the Taylor Cylinder, took from 'Hezekiah of Judah forty-six of his strong walled cities, and the smaller cities round about them, without number.' Ordinarily, the captives of the invaded districts were exiled. 7) chap. 6. 8) lit., 'fat'.



the nation rather than with the individual'<sup>1</sup>. The disloyalty of the northern and southern kingdoms to their divine king arouses Yahwe's displeasure. Yahwe himself will bring upon both houses of Israel all the perils of foreign invasion<sup>2</sup>. Thus Israel is doomed to early extinction'<sup>3</sup>. 'The Lord sends a word against Jacob, and it shall light upon Israel, so that the entire people may feel it, yea, Ephraim and the inhabitants of Samaria'<sup>4</sup>. The impending disaster will be overwhelming; high and low shall perish<sup>5</sup>. Israel's external foes will find the northern kingdom rent asunder by civil strife and intertribal warfare. Manasseh is ranged against Ephraim, 'and both together are against Judah'<sup>6</sup>. The God of Israel has abandoned the house of Israel as well as the tribe of Judah constituting the southern kingdom. In the parable of the vineyard, Yahwe's wrath is kindled against his people because of the social abuses of the upper classes<sup>7</sup>. 'The vineyard of Yahwe of hosts is the house of Israel, and the men of Judah are his cherished plantation; and he looked for justice, but behold bloodshed; for righteousness, but behold an outcry'. Israel, like an unfilial child, has requited Yahwe's parental care with indifference and open rebellion. 'The ox knoweth its owner, and the ass its master's crib; Israel doth not know, my people doth not consider. Ah! sinful nation, people deep-laden with guilt, race of evil-doers, perverse children!'<sup>8</sup>. As in the year 722 B.C., so at a subsequent date, the Assyrian is to be the rod of Yahwe's punitive anger toward the land of Judah. 'Against an impious nation am I wont to send him, and against the people of my wrath I give him a charge, to take spoil and acquire plunder, and to trample upon them like mire in the streets'<sup>9</sup>. Jerusalem 'comes to ruin and Judah falls'<sup>10</sup>. Notwithstanding the references in the present text of Jeremiah's prophecies to individual responsibility<sup>11</sup>, the old conception of solidarity still predominates. The prophet is thinking primarily not of the individual as such but of the nation, the further development of the doctrine of individualism

1) To Isaiah 'the nation is an indivisible whole.' Duhm, p. 48.

2) Cp. 8:14. 3) 8:1 ff.; 5:25—30. 4) 9:8—9. 5) v. 14; cp. 7:24; 17:3—4, 9—10; 28:1 ff., 18 ff. 6) 9:21. 7) 5:1 ff.; 1:23; 3:14—15. 8) 1:3—4. 9) 10:6. 10) 3:8; cp. 29:1—14. 11) 31:29 ff. (cp. Ezek. 18:2 ff.); 3:14—16; 12:1 ff.; 15:1 ff.; 17:9 ff.; 32:18 ff.

being reserved for his exilic successor<sup>1</sup>. To him, as in the case of the group morality system of Deuteronomy, it is the nation, rather than the individual, that is subject to rewards and punishments<sup>2</sup>. Jeremiah's prophetic activity, like that of Amos and Isaiah, embraces his own as well as other nations. 'I have appointed thee to be a prophet unto the nations... Behold, I have this day set thee over nations and kingdoms, to pluck up and break down, to destroy and to overthrow, to build and to plant...<sup>3</sup> Then Yahwe said unto me, From the north disaster is brewing upon all the inhabitants of the land. For behold, I will call all the clans<sup>4</sup> of the kingdoms of the north, and they shall come and invest Jerusalem and the cities of Judah. And I will pass judgment upon them because they have forsaken me'<sup>5</sup>. Influenced by the writings of Hosea, Jeremiah appeals to the antecedents of the nation under the figure<sup>6</sup> of Israel's bridal relation to Yahwe. 'Go and cry in the ears of Jerusalem, saying, Thus saith Yahwe, I remember the affection of thy youth, the love of thy bridal time, when thou wentest after me in the wilderness, in a land that was not sown. Israel was Yahwe's sacred possession, the first fruit of his increase... Hear the word of Yahwe, O house of Jacob, and the whole clan<sup>7</sup> of the house of Israel, What evil did your fathers find in me that they went far from me? I brought you into a fertile land, but when ye entered, ye defiled my land and made my heritage an abomination. Have heathen nations changed their gods<sup>8</sup> although these are no gods? Yet my people hath exchanged its religion<sup>9</sup> for useless idols... Shall I not be avenged on such a nation as this? For among my people are found wicked men. They set a trap, they catch men. As a cage is full of birds, so their houses are full of deceit; therefore they have become great and rich. They do not administer justice; the cause of the fatherless and the rights of the needy<sup>10</sup> they do not defend. Shall I not punish such as

1) Smith, J. M. P., *The Prophet and his Problems*, 192ff. 2) Cp. 11: 1-8; but see Cornill, ad loc. 3) Cp. 18:6-10; 25:15ff. 4) 'nations', but omitted in LXX. 5) 1:5, 10, 14-16; cp. 4:6ff.; 6:1ff., 22ff.; 10:22; 50:41 ff. 6) The phrase, 'daughter of my people,' which also occurs, has reference to the people of the land. 4:11; 8:19-22; 9:1, 2, 7; 14:7; cp. 4:31; 6:2. 7) So Gk. 8) LXX. 9) lit., 'honor,' 'glory.' 10) 'widow' (Gk).

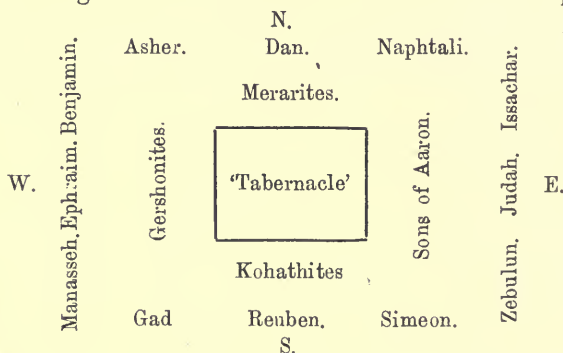
these? or shall I not be avenged on such a nation as this?<sup>1</sup> Further intercession in behalf of this people will be of no avail. 'Then said Yahwe unto me, Pray not for this people for I will consume them by the sword, by the famine, and by the pestilence . . . Though Moses<sup>2</sup> and Samuel<sup>3</sup> stood before me, yet my heart would not be inclined toward them. Cast this people out of my sight, and let them go forth. And when they say unto thee, Whither shall we go forth? then thou shalt tell them, Thus saith Yahwe, Such as are for death, to death; and such as are for the sword, to the sword; and such as are for the famine, to the famine; and such as are for captivity, to captivity<sup>4</sup> . . . And I will cause them to be a terrifying spectacle unto all the kingdoms of the earth, because of Manasseh<sup>5</sup>, the son of Hezekiah, king of Judah, for all that he did in Jerusalem<sup>6</sup>. With the dominance of the old conception of solidarity, the inclusion of children under the judgments of pre-exilic prophetism, follows as a matter of course, not to mention the passage in Jeremiah 2:9, according to which the descendants of Yahwe's apostate people are by no means free from the guilt of their fathers<sup>7</sup>.

Religion, moreover, is a matter of the tribe<sup>8</sup> and its subdivisions as well as the nation. In Judges 18:1ff. six hundred fighting men of the tribe of Dan, in quest of a permanent dwelling-place, persuade the priest of Micah's household to join them and become their priest. The Levite, it seems, was easily persuaded to cast in his lot with them, taking with him, at their behest, the sacred paraphernalia of Micah's temple. 'Go with us and be to us a father and a priest. Is it better for thee to be a priest to one man's household, or a priest to a tribe and a clan in Israel? The priest was pleased, and placed himself in the midst of the men'.

In the opening chapters of the book of Numbers, Moses is

1) 2:2-5, 7, 11; 5:9, 26-29. Cf. 9:9. 2) Ex. 17; 32:11ff.; Num. 14:13ff.; Ps. 99:6. 3) 1 S. 7:9; 12:19ff. 4) Cp. 4:19ff.; 7:15, 34; 14:16; 15:9; 19:10ff. 'And death shall be chosen rather than life by all the residue that remain of this wicked clan in all the places whither I have driven them.' 8:3; but cp. chap. 24. 5) Conversely Jerusalem will be spared if there be found in the city a righteous man. 5:1. 6) 14:11, 12; 15:1, 2, 4. Cp. 2 K. 21:11ff.; 23:26; 24:3. 7) Cp. 13, 3-14; 14:16; Lam. 5:7. Moreover, the invading Chaldeans will not distinguish between the righteous and the wicked; Ezek. 21:1-9 (= 20:45-21:4). Cp. Job 9:22; Luk. 23:31. 8) Cf. Josh. 22:9ff.; see above, p. 26, note 1.

enjoined to take a census of the tribal hosts of Israel 'by their clans, by their father's houses, according to the number of individual names, all the males from twenty years old and upward, all in Israel who are capable of bearing arms. And a man from each tribe shall assist you, that is to say, the respective head of his fathers' houses' <sup>1</sup>. The totals for each of the twelve secular tribes <sup>2</sup> having been duly ascertained, there follows in chapter 2 the arrangement of the tribes in camp and on the march according to a prescribed order. In chapter 3 the tribe of Levi is definitely set apart for sacred functions in satisfaction of Yahwe's claim to the firstborn male Israelites' <sup>3</sup>. The Levites shall be numbered 'by their father's houses, by their clans, every male from a month old and upward'. It is worth noting that the father's house, in this passage at least, occupies an intermediate position between the tribe and the clan. This is clear from the subsequent enumeration of the three major clan groups of the tribe of Levi <sup>4</sup>, who together with the sons of Aaron formed the inner quadrilateral <sup>5</sup> of the camp, thus protecting from undue approach the tent <sup>6</sup> of meeting which stood in the center. The twelve secular tribes, i. e., three tribes on the east, south, west, and north respectively, constituted the outer quadrilateral. The following diagram is an approximation to the probable arrangement of the tribes described in these chapters: —



1) 1:2—4.

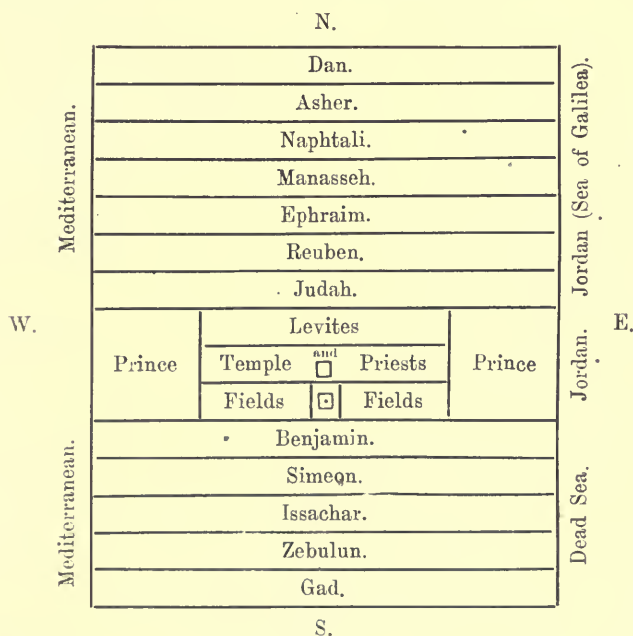
2) 1:20—46; chap. 26.

3) Cp. 8:6ff; 18:2ff.

4) The *bet-ab* of Num. 4:2, as in the case of 1:2, is a subdivision of the clan. 5) 2:17; cp. 1:48—54; 3:23, 29, 35, 38.

6) It is related that upon completion of the sacred tent in the second year of the exodus, each of the twelve tribal princes (1:5ff.) brought to the sanctuary his dedication-gifts. 7:1ff.

Underlying the whole arrangement is the thought of Yahwe's sanctifying presence in the midst of his people<sup>1</sup>. Ezekiel's restoration program<sup>2</sup>, it may be observed, points to a similar subordination of tribal interests to the same fundamental idea. The land, which is conceived as a long rectangular strip of country, is divided into twelve parallel transverse sections of equal magnitude, seven of these constituting the northern group, viz., Dan, Asher, Naphtali, Manasseh, Ephraim, Reuben, and Judah; the remaining sections south of the sacred oblation being assigned to the tribes of Benjamin, Simeon, Issachar, Zebulun, and Gad. In other words, the sons of Leah and Rachel are evenly distributed on both sides of the sanctuary, while the sons of Jacob's handmaids are relegated to the extreme north and south of the temple. The result is that we get an exact parallelogram, enclosing the temple, which is to be the gravitating center of the national life. This arrangement may be shown by diagram thus —



1) Cp. 5:3; Lev. 15:31; 26:11—12.

2) 45:1ff.; 47; 48. See *Soc.*

*Leg. Prim. Sem.*, 194—205.



In Numbers 16:1 ff. Korah and his followers, claiming equal holiness for all the tribes of Israel, rebel against the priestly prerogatives of Moses and Aaron. This rebellion having come to naught in the manner previously described<sup>1</sup>, the miraculous blossoming of Aaron's rod serves as a further vindication of the exclusive rights of the tribe of Levi to the exercise of sacerdotal functions. 'Thereupon Yahwe spake unto Moses, saying, Speak unto the sons of Israel, and take from them a rod for each tribe<sup>2</sup>, from all their princes according to their tribes twelve rods; the name of each shalt thou write upon his rod. The name of Aaron, however, shalt thou write upon the rod of Levi, for there is to be a rod (also) for the head of their fathers' houses<sup>3</sup>. Then thou shalt lay them down in the tent of meeting'. The next day Moses returned to the tent, 'and behold, the rod of Aaron of the house of Levi had sprouted, and brought forth buds, and ripened almonds'<sup>4</sup>. The Levites appear again in connection with the presentation of the blessings and maledictions, set forth at length in Deuteronomy 27:11 ff., and 28:1 ff. On this occasion the ratification and acceptance of the Deuteronomic law is reserved for the tribes of Israel assembled on Mount Gerizim and Mount Ebal. The narrative in the twenty-seventh chapter of Deuteronomy speaks of two groups of six tribes each, the one group standing on Gerizim and invoking a blessing upon the people in the event of obedience; the other, on Ebal invoking a curse in the event of disobedience to God's commands. The tribes invoking the blessing are Simeon, Levi, Judah, Issachar, Joseph, and Benjamin; those invoking a curse are Reuben, Gad, Asher, Zebulun, Dan, and Naphtali. In the remaining portion of the same chapter, the Levites pronounce a series of twelve imprecations directed against a corresponding number of offenses. The formal response of the people, which follows, testifies to the binding power of these pronouncements<sup>5</sup>. The tribes, according to Joshua 24:1 ff., are once more assembled before Yahwe at Shechem for the purpose of making a covenant looking to the allegiance of the people

1) See above, chap. 1. 2) Lit., 'father's house' (*bet-ab*), Num. 17:17 (2); cp vv 18 (3), 21 (6); Ex. 6:14 ff. 3) The phrase, 'their fathers' houses' must refer to the main divisions of the tribe of Levi. So again in 2 Chron. 35:4. 4) 17:16-19 (1-4). 23 (8); cp. Ex. 4:14-17, 27 ff.; 28:1 ff.; 29:9; 1 S. 2:27 ff. 5) Cp. Deut 11:26 ff.; Josh 8:33 ff.



to the God of Israel. But with the establishment of the central sanctuary<sup>1</sup>, Jerusalem henceforth becomes a place of pilgrimage, 'whither the tribes go up, the tribes of Yahwe, as it is prescribed for Israel, to give thanks to the name of Yahwe'<sup>2</sup>. The judgment announced by Hosea<sup>3</sup> concerning the tribes of Israel is sure of fulfilment because of their disloyalty to Yahwe. 'Ephraim shall become a desolation in the day of punishment: concerning the tribes of Israel do I make known that which is sure' of fulfilment. Voicing the desires of the exiles, the author of Isaiah 63:17 exclaims, 'Why, O Yahwe, dost thou make us wander from thy ways, dost harden our hearts so, that we do not fear thee? Return<sup>4</sup> for the sake of thy servants, for the sake of the tribes of thine inheritance!' Lastly, Isaiah 49:5-6 points to the restoration of the tribes of Jacob, Israel ultimately becoming the light of the nations of the earth.

Anciently the clan, as before stated, was a religious unity. The evidence in this direction is much more conclusive than in the case of the tribe. Thus the passover festival concerns itself primarily with the clan and not with the individual. 'Then Moses summoned all the elders of Israel, and said unto them, Go forth and take lambs from the herds for your clans, and kill the passover'<sup>5</sup>. The six hundred Danites, already referred to, although potentially a tribe, inasmuch as they gave the tribal name to the new settlement, may safely be regarded as a good sized clan. This is borne out by the passage in Judges 18:19, where the designation 'tribe' appears to be the equivalent of the word 'clan'. The argument of the Danites is that it is better for Micah's Levite to be priest to a clan in Israel than to one man's household<sup>6</sup>. Again, the entire clan to which the household

1) Ex 23:14, 17; 34:24; Deut. 12:5, 14; 16:16. 2) Ps. 122:4; cp. 96:7; 29:1, 2; 22:27; 96:7; 1 Chron. 16:28. 3) 5:9. 4) Cp. Num. 10:36. 5) Ex. 12:21. 6) In 1 S. 22:20ff., Abiathar, the only surviving priest of the house of Ahimelech, flees to David with an ephod in his hand, and becomes his priest. David, at the head of six hundred (1 S 23:13; cf. 22:2; 25:13; 30:9) men, consults, like the Danites of Judg. 18:5ff., the oracle of God before attacking the Philistines who had invested Keilah. While at Keilah, David, hearing of Saul's intention to besiege him and his men, summons Abiathar, the priest, requesting him to 'bring hither the ephod' (1 S. 23:9). Then David and his men left Keilah and abode in the wilderness of Judah.

of Jesse belongs is about to assemble for the yearly sacrifice to Yahwe<sup>1</sup>. Knowing of Saul's hostile intentions, David proposes to absent himself from the court, saying to Jonathan, 'Behold, to-morrow is the new moon<sup>2</sup> and I should not fail to sit with the king to eat bread; but let me go and I will hide myself in the field until the evening of the third day. If thy father miss me, then thou shalt say, David urgently asked leave of me that he might run to Bethlehem his city, for there is to be a yearly sacrifice for the whole clan'. In answer to his father's inquiry concerning David's absence, Jonathan makes the excuse agreed upon, saying, 'David urgently asked leave of me to run to Bethlehem, for he said, Let me go, I pray, since we have a clan sacrifice in the city; and that was what my brethren<sup>3</sup> commanded me. Now if I have found favor in thy sight, let me get away, I pray, that I may see my kinsmen'<sup>4</sup>. So, again, the sheep-shearing festival, mentioned in 1 Samuel 25:2ff., furnishes an occasion of rejoicing both to the household of Nabal and to the members of his clan. Nabal was a man of wealth, belonging to the clan of Caleb. 'And David heard in the wilderness that Nabal was shearing sheep. And David sent ten young men, and said to the young men, Go up to Nabal, and ask him of his welfare in my name; and ye shall say to him and to his clan<sup>5</sup>, Peace be to thee, and to thy house, and to all that thou hast'. The messengers now state their request and Nabal replies, 'Shall I take my bread, and my water, and my (sacrificial) flesh that I have slain for my shearers, and give it to men of whom I know not whence they are?' David in his wrath determines to avenge the insult on Nabal and his household. Abigail, however, appeases David's anger by an appeal to his magnanimity, David contenting himself with the gifts presented to him by Nabal's wife. Obviously, the feast of sheep shearing in the village of Maon, like the clan sacrifice at Bethlehem, was accompanied by a sacrificial meal to which the members of the clan were invited in order to renew their relationship with God

1) Cp. 1 S. 16:2ff. See above, chap. I, p. 9 note 2. 2) An ancient festival. Cf. Am. 8:5; Hos. 2:13 (11); Isa. 1:13. 3) i. e., my clansmen. Cf. Smith, *Rel. Sem.*, p. 258, n. 1. 4) 1 S. 20:5, 6, 28, 29. The clan was an association of 'brothers', i. e., of kinsmen on the father's side. Cf. Gen. 24:27; 29:15. 5) Cf. Smith, *Samuel*, 223.

and with one another. Finally, the festival of Purim<sup>1</sup>, inserted by the religious authorities in the sacred calendar of the Jews, shall be kept clan by clan throughout every generation<sup>2</sup>.

The clan, then, is an aggregation of kinsmen, having common religious interests. Originally, sacrifice was an affair of the clan. It was the intense feeling of group responsibility prevailing among the ancient Hebrews that led to the institution of a common worship for all concerned. Religious conformity on the part of every clansman brings a blessing to the whole group<sup>3</sup>. Any deviation from the customary acts of worship is nothing short of a calamity, each group being responsible for the maintenance of religion. Hence expulsion of the nonconformist becomes a religious duty. Failure to exercise this duty involves the entire kinship group in corporate guilt and punishment. To tolerate, even for one moment, such nonconformity with all its possibilities for evil to the community at large, would bring down the divine wrath upon all alike. Consequently we read, 'Any man of the children of Israel that giveth of his offspring to Molech shall surely be put to death; the people of the land shall stone him. I will also set my face against that man, and will cut him off from among his people; because he hath given of his offspring to Molech, to defile my sanctuary, and to profane my holy name. And if the people of the land do at all shut their eyes to that man's doings, when he giveth of his offspring to Molech, and fail to put him to death, then will I set my face against that man, and against his clan', and will punish him and his followers<sup>4</sup>.

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1) For a discussion of the origin of the feast of Purim, see Paton, *Esther*, pp 77ff. 2) *Esth.* 9:28. 3) *Num.* 10:36; *Ps.* 107:41. As a rule Hebrew *elep* corresponds to the word 'clan' (*mishpaha*), used in the sense of a tribal division. Cf. Baentsch, *Num.*, 503, 496; Gray, *Num.*, 97, 9. 4) *Lev.* 20:2-5. In *Ezek.* 20:1ff., Yahwe refuses to be consulted by the elders of the exilic clans not merely because of the sins of the exilic community but also because of the sins of the forefathers. 'Then this word of Yahwe came to me: Son of man, speak to the elders of Israel, and make known to them the abominations of their fathers. . . O house of Israel, I will not be consulted by you; and the evil thoughts of your mind shall not obtain, in that ye say, We will be as the heathen nations, as the 'clans' of the heathen lands, to serve wood and stone.'

The household, no less than the clan, is a unit in the exercise of religion. 'And Jahwe said, Shall I hide from Abraham what I am planning to do? For I have chosen him that he might command his sons and his household<sup>1</sup> after him, that they should cling to the religion<sup>2</sup> of Yahwe, in order that Yahwe may fulfill in Abraham that which he hath spoken of him'<sup>3</sup>. Exodus 12:3ff. relates to the observance by each 'house' of the passover which ultimately became a domestic institution. There is to be provided for each 'house' a lamb, 'but if the household be too small for a lamb, then shall he<sup>4</sup> and his neighbor who dwells nearest to his house take one together, according to the number of persons<sup>5</sup>; according to each one's ability to eat shall ye make your reckoning for the lamb'. The author of the well-known passage in Joshua 24:15 remarks with great emphasis, 'But as for me and my house, we will serve Yahwe'. In Judges 17:7ff. a wandering Levite from Bethlehem agrees to remain in Micah's house and become his priest, thus displacing one of Micah's own sons who had previously been appointed to officiate at the little sanctuary. 'Then Micah said, Now I know that Yahwe will prosper me, because I have a Levite for priest'.

The measure of Yahwe's blessing, it will be remembered, is not limited to the head of the house. It includes all the members of the household, in accordance with the ancient principle of solidarity. Thus we read, 'Noah, however, found favor in the eyes of Yahwe . . . And God said unto Noah, I will establish with thee my covenant; and thou shalt enter the ark, thou, and thy sons, and thy wife, and thy sons' wives with thee . . . Then Yahwe said unto Noah, Come thou and thy whole house into the ark; for thee have I found righteous before me in this generation'<sup>6</sup>. Similarly, Lot and his household are delivered from the fate of Sodom and Gomorrah<sup>7</sup>. Further, the people in the wilderness, greatly disheartened by the report of the spies, propose to replace Moses by another leader and return to Egypt. As a punishment

1) lit., 'house'. 2) Heb. *derek*, 'way'. Cp. Acts 22:4; 24:14.

3) Gen. 18:17, 19. 4) i. e., the head of the house. 5) Among the later Jews ten persons were regarded as the minimum number of participants, twenty being the maximum. Cf. Targ., *Jer.* 1; Jos., *Bell. Jud.*, VI, 9, 3. 6) Gen. 6:8, 18; 7:1; cp. 7:7, 13; 1 Pet. 3:20. 7) See above, pp. 14—16; compare also Deut. 2:19.

for their blasphemous murmurings, Yahwe insists that none of the men of that generation shall enter the promised land, 'save Caleb<sup>1</sup>, the son of Jephunneh; he shall see it, and to him will I give the land which he hath trodden upon, and to his children, because he hath gone fully after Yahwe'<sup>2</sup>. In a passage, already alluded to, Abigail, having apologized for the arrogance of Nabal and taken upon herself the responsibility for his guilt, continues, 'Forgive, I pray, the trespass of thy maidservant, for Yahwe will certainly make for my lord a secure house, since my lord is fighting the wars of Yahwe'<sup>3</sup>. 2 Samuel 7:1ff. tells us that David, contemplating the erection of a temple to Yahwe, lays the matter before Nathan who lends a willing ear, approving the plan. Later the prophet is directed to veto the plan. Nevertheless the king is assured of a blessing in the establishment of a perpetual dynasty. 'I will raise up thy seed after thee, and I will establish his kingdom. He shall build a house for my name, and I will establish his royal throne forever'. Solomon's long reign was a notable one. It was noted also among other things for the disastrous effects of its foreign alliances upon the religion of Israel. 'Therefore Yahwe said unto Solomon, I will surely rend the kingdom from thee, and will give it to thy servant. Notwithstanding in thy days I will not do it for David thy father's sake; but I will rend it out of the hand of thy son. Howbeit I will not rend away the whole kingdom; but will give one tribe<sup>4</sup> to thy son for the sake of David my servant, so that David may have a lamp ever before me in Jerusalem'<sup>5</sup>. From 2 Kings 8:18—19 we learn that Jehoram, the king of Judah, followed the example of the house of Ahab, 'for he had married the daughter of Ahab, and did evil in the sight of Yahwe. However, Yahwe would not destroy Judah for the sake of David his servant, since he had promised to give him always a lamp<sup>6</sup> (and) to his children'<sup>7</sup>. The cardinal sin of the house of Ahab was its departure from the pure Yahwe worship in favor of

1) Cf. Num. 14:30. 2) Deut. 1:36; cf. Num. 14:22—24. 3) 1 S. 25:28; cp. 1 S. 18:17; Num. 21:14. 4) Cp. 1 K. 12:21; 2 Chron. 11:1. 5) 1 K. 11:11—13, 36. 6) The lamp, as in 1 K. 11:36, must refer to David's children. 7) Instead of 'to (or for) his children', some manuscripts read, 'before him.' So also Benzinger (ad loc., in *Kurzer Hand-Comm.* z. A. T.) by a slight emendation in the received text.



Baalism. With truly missionary zeal both Jezebel and Athaliah lent themselves to the task of spreading their religious propaganda. But the champions of Yahwe — Elisha and Jehu — were no less aggressive in their endeavor to dislodge the cult which had begun to intrench itself upon the religious and social ideals of the nation. By a series of well laid plans the reactionary party soon gained the ascendancy, and the house of Ahab came to an end<sup>1</sup>. 'Then Yahwe said unto Jehu, Because thou hast done to the house of Ahab according to all that was in my heart, thy sons even to the fourth generation shall sit on the throne of Israel'<sup>2</sup>. Reverting to Davidic times we find that the restoration of the ark of Yahwe, and its consequent settlement at Jerusalem, was due to the discovery on the part of those specially interested that God 'had blessed Obed-Edom and his entire household because of the ark'<sup>3</sup>, the sacred emblem of Yahwe's presence. David's decision to bring the ark to Jerusalem was prompted by his desire to divert this blessing to his own house. Lucian in his recension of the Greek text expressly adds, 'And David said, I will turn the blessing to my house'. The psalmist, commenting on the enrichment of the righteous and the impoverishment of the wicked, observes, 'I have never seen a righteous man forsaken, nor his offspring begging bread. He is ever charitable, and lendeth; and to his offspring a blessing is assured. The offspring of the wicked, however, shall be cut off'<sup>4</sup>.

That the primal unit of Israelitish society has a solidarity is further borne out by the suffering of the innocent with the guilty. In other words, any guilt incurred by the head of the house is shared by the rest of the household. Consequently there can be no question, from the standpoint of the ancient Hebrews, as to the justice or injustice of the inclusion of the latter in the punishment of the former. For example, the punishment of the rebellious Reubenites, adverted to in Numbers 16:1 ff., involved the entire households and the property of the offenders. In like manner, the principle of solidarity accounts for the punishment inflicted upon Achan. The defeat of Israel's expeditionary force

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1) The first victims of this revolution (842 B. C.) were Joram, king of Israel, and Abaziah, king of Judah, who was visiting his royal cousin at the time.    2) 2 K. 10:30.    3) 2 S. 6:11—12.    4) 37:25, 26, 28.



before Ai occasioned great distress in the camp of the invading Israelites. 'And Joshua said, Alas, O Lord God, why didst thou let this people cross the Jordan only to give us into the hand of the Amorites to be destroyed? Would to God we had been content, and remained beyond the Jordan! And Yahwe said to Joshua, Israel has sinned, and they have also transgressed my covenant which I commanded them, for they have taken some of the devoted things, and stolen, and dealt deceitfully, and put the devoted things among their own goods . . . Arise! purify the people, and present yourselves tribe by tribe, clan by clan, house by house, and man by man. He who is found with a devoted thing shall be burnt, he and all belonging to him'<sup>1</sup>. The offender, having been discovered, 'Joshua and all Israel with him, took Achan, and his sons, and his daughters, and his oxen, and his asses, and his sheep, and his tent, and all belonging to him, and burned them with fire after they had stoned them'<sup>2</sup>. Achan's household is a unit; hence the divine judgment, like the judgment on Dathan and Abiram, involves the household and property of the culprit. Similarly, the Danites, resenting Micah's interference with their plans, exclaim, 'Let not thy voice be heard among us, lest thou forfeit thy life and the lives of thy household'<sup>3</sup>. Again, the guilt of Eli and his house shall not be expiated forever<sup>4</sup>. So, too, the sword shall never depart from the house of David because the king has despised Yahwe by the violation of Uriah's marriage rights<sup>5</sup>. In a passage, already cited<sup>6</sup>, the withdrawal of the northern tribes from the Davidic dynasty is ascribed in part to Solomon's idolatrous worship of the gods of his foreign wives. The division of the kingdom, however, is postponed until the days of Rehoboam, the son and successor of Solomon. To secure his throne Jeroboam set in opposition to the temple at Jerusalem a golden calf at Bethel and Dan. The setting up of these representations of Yahwe in the face of the imageless principle of Yahwe worship in the decalogue, constitutes the sin of Jeroboam 'wherewith he made Israel to sin'<sup>7</sup>. Of Jeroboam, the son of Nebat, it is said, 'I will rise up against the house of Jeroboam with the sword . . . Behold; I will utterly sweep away

1) Josh. 7:7, 10, 11, 13, 14, 15. Cp. 22:20. 2) vv. 24-25. 3) Judg. 18:25. 4) 1 S. 2:29ff. 5) 2 S. 12:9ff. 6) See above, p. 39, note 5. 7) 1 K. 14:16; 15:30, 34.

the dynasty of Jeroboam, as a man sweepeth away refuse, until it is gone' <sup>1</sup>. This prophecy was fulfilled by Baasha, one of Nadab's generals, who 'smote the whole house of Jeroboam' <sup>2</sup>. But Baasha 'displeased Yahwe, and walked in the way of Jeroboam, and in his sin wherewith he made Israel to sin'. Therefore, Baasha and his house shall become like the house of Jeroboam, the son of Nebat. His son Elah, after a reign of two years, is slain by Zimri, who 'smote the whole house of Baasha; he left him not a single male, either of his kinsmen or of his friends' <sup>3</sup>. Once again, the treacherous seizure of Naboth's vineyard ends in the subversion of the house of Ahab. Elijah, espousing the cause of the unfortunate peasant, comes forward and utters an awful curse upon King Ahab and his posterity. 'I will bring evil upon thee, and I will make thy house like the house of Jeroboam, the son of Nebat, and like the house of Baasha, the son of Ahijah' <sup>4</sup>. A decade or two thereafter Jehu slew the descendants of the house of Ahab, including Joram, the reigning king of Israel <sup>5</sup>. It will be recalled that the general of Ahab's royal son had been previously anointed king of Israel by Elisha, the prophet. Indications are not wanting in the prophetic writings of Elisha's successors to show that the household was conceived as a solidaric unity. It is quite evident that the statement in Isaiah 14:20—21 concerning the ignominious fate of the king of Babylon is based upon such a conception. 'Nevermore be named the posterity of the wicked! Prepare for his sons a place of slaughter, because of the guilt of their father' <sup>6</sup>, that they rise not and possess the earth'. Amos testifies to the persistence of the same doctrine in his condemnation of the base servility of Amaziah, the fawning court prophet at Bethel. Turning to the priest of Bethel, Amos makes the following declaration, 'Thou sayest, Do not prophesy against Israel, nor preach against the house of Isaac. Therefore thus saith Yahwe, Thy wife shall become a harlot in the city, and thy sons and thy daughters shall fall by the sword, and thy land shall be divided by line' to Assyrian colonists <sup>7</sup>. Jeremiah, who had been subjected to numerous indignities at the hands of Pashur, the head of the

1) Am. 7:9; 1 K. 14:10.

2) 1 K. 15:29.

3) 15:34; 16:11.

4) 21:21, 22; cf. 2 K. 9:8—9.

5) 2 K. 9:21 ff.; 10:1 ff.; 11:20.

6) Cf.

Duhm, ad loc.

7) 7:16, 17.

temple priesthood, asserts that Pashur and his household shall be exiled together. 'And thou, Pashur, and all that dwell in thy house shall go into captivity, and thou shalt die at Babylon and be buried there, together with thy friends to whom thou hast prophesied falsehood'<sup>1</sup>. The author of Jeremiah 18:21 invokes a similar punishment upon the personal enemies of Yahwe's spokesman. 'Therefore deliver up their children to famine, and consign them to the power of the sword, and let their wives become childless and widows, let their men be slain by death, and their young men smitten by the sword in battle'<sup>2</sup>. It is from this point of view no doubt that the friends of Job set forth the terrible punishments of the wicked. 'Yea, the light of the wicked shall be extinguished . . He shall have neither progeny nor posterity among his people, nor any remaining in his dwellings . . God reserveth for his children the consequences of his guilt. For what pleasure hath he in his house after him?'<sup>3</sup> Finding that the returned exiles were in great distress, Nehemiah prays in their behalf, 'making confession of the sins of the sons of Israel which we<sup>4</sup> have sinned against thee, and I and my father's house have sinned'<sup>5</sup>. The cause of Israel's downfall is ascribed to a general disregard of the law, chief among which is the profanation of the sabbath day. And now the returned Jews are implicated in a like desecration. 'Then I contended with the nobles of Judah, and said unto them, What evil thing is this that ye are doing, and thereby profaning the sabbath? Did not your fathers do thus, and did not our God bring all this calamity upon us<sup>6</sup>, and upon this city? Yet ye would bring additional wrath upon Israel by profaning the sabbath'<sup>7</sup>.

### Chapter III.

## Tribal Solidarity and Politics

As in the sphere of religion, so in the domain of politics, the principle of solidarity obtains among the various groups of

1) 20:6.      2) Cp. 2:9.      3) 18:5, 19; 21:19, 21; cp. Prov. 13:9; 20:20; 24:20.      4) 'they' (Gk.).      5) 1:6.      6) The Greek text has 'upon them and us.'      7) Neh. 13:17-18.

early Israelitish society, religion and politics being most intimately connected<sup>1</sup>.

That the political interest was primarily religious is clear from the 'devotion'<sup>2</sup> to Yahwe of hostile alien groups, involving at times the destruction of all the males of the conquered enemy<sup>3</sup>, at other times of the entire population. 'When Yahwe thy God shall bring thee into the land which thou art going to possess, and shall clear away many nations before thee; and shall deliver them into thy hands, then thou shalt completely destroy them. Thou shalt consume<sup>4</sup> all the peoples that Yahwe thy God shall deliver unto thee; thine eyes shall not pity them; neither shalt thou serve their gods, for that would be a snare unto thee. Of the cities of these peoples, thou shalt save alive nothing that breatheth; but thou shalt utterly destroy them that they teach you not to do according to all their abominations',<sup>5</sup>. A nation or city was 'devoted' or put under the ban for the purpose of checking idolatry. The ban of destruction is commonly applied to those who do not belong to the community of Israel. Here it is prescribed for the idolatrous Amorites<sup>6</sup>, dwelling for the

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1) Where the political interest is regarded as primarily religious, the separation of Church and State is unthinkable. 2) Heb. *herem*.

3) Num. 31:7, 17; Deut. 20:13; 1 K. 11:15, 16. 4) Lit., 'eat.' 5) Deut. 7:1, 2, 16; 20:16, 17, 18.

6) From its original habitat in South Arabia this people at an early date moved northward and occupied a large part of Syria, later called 'the land of the Amorites.' By their conquest of Babylonia the Amorites enlarged their dominions, so that henceforth the name 'Amorite' included the entire west-land, that is to say, all the settled and civilized peoples west of the Euphrates irrespective of their racial antecedents. For many years an Amorite dynasty held sway in northern Babylonia. The most distinguished ruler of this dynasty is *Hammurapi*, the lawgiver, who calls himself 'king of the Amorites.' His great-grandson still calls himself 'king of the widespread land of the Amorites.' In the Amarna letters (about 1400 B. C.) 'the land of the Amorites' denoted the inland region in northern Palestine. With the decline of Egyptian influence in Canaan, the Amorites (derived from Canaan, Gen. 10:16) overran the old Egyptian provinces east of the Jordan, and established there two Amorite principalities of considerable importance. They were ejected from their possessions by the Israelites following Sihon's refusal to let them pass through his dominions (Num. 21:13ff.; Deut. 2:24ff.; Judg. 11:19ff.; Num. 32:39). In numerous passages the term 'Amorite' refers to the pre-Israelitish population of Canaan proper. As an ethnic term

most part in the cities of Canaan. So, again, in the east-Jordanic conquests of the Israelites, the inhabitants of the Amorite cities are put under the ban of destruction. 'Then Sihon came out against us, he and all his people, to fight Jahaz. And we smote him, and his sons, and all his people. And we took all his cities, devoting the men, and the women, and the little ones'<sup>1</sup>. Prior to the fall of Jericho, Joshua said to the people, Shout! Yahwe has given you the city, but the city and all that is therein shall be devoted to Yahwe. Beware of the devoted things lest ye take any of them, and thereby make the camp of Israel devoted and bring calamity upon it; all silver and gold and vessels of bronze and iron are to be consecrated to Yahwe: they shall come into the treasury of Yahwe'. Thereupon the Israelites 'devoted everything that was in the city, putting to the sword both men and women, young and old, oxen, sheep, and asses'<sup>2</sup>. Joshua in like manner devoted all the inhabitants of Ai<sup>3</sup>. 'Only the cattle and the plunder of that city the Israelites took to themselves as spoil'<sup>4</sup>. Cattle and other movable property which fell into the hands of the invaders may, or may not, be treated as *herem*, according to the gravity of the occasion. Moreover, in 1 Samuel 15:1ff., Saul is commanded to devote Amalek to utter destruction because of what that people did to Israel in the wilderness. 'Now go and smite Amalek and devote him and all that he has, and spare him not, but slay both man and woman, child and suckling, ox and sheep, camel and ass. And when Saul came to the capital of Amalek, he smote the Amalekites. And he took Agag, the king of Amalek, alive and he devoted all the people with the edge of the sword. But Saul and the people spared Agag and the best of the sheep, the oxen, and the fatlings, the lambs, and all that was good, and would not devote them'. Saul's act of disobedience is followed by Samuel's

Amorite' is somewhat less comprehensive in meaning than 'Canaanite' which is generally used in a geographical sense. However, both names are regarded by many as practically synonymous.

1) 2:32, 33, 34. cf. 3:6—7. Cp. Num. 21:21ff.; Deut. 29:7—8.

2) Josh. 6:17, 18, 19, 21.

3) Other cities falling under the ban of destruction are Makkedah (Josh. 10:28), Libnah (10:30), Lachish (10:32), Eglon (10:35), Hebron (10:37), Debir (10:39), and Zephath-Hormah (Judg. 1:17; cp. Num. 21:3).

4) 8:26, 27; cp. Deut. 2:35.



formal announcement that Yahwe has rejected him. 'Because thou hast rejected the word of Yahwe, he has rejected thee from being king'. Extermination by devotion to the ban, however, is not restricted to the idolatrous Canaanites and to the 'sinners of Amalek'. The idolatrous Hebrew city, for example, must be destroyed in its entirety. 'Thou shalt surely smite the inhabitants of that city with the edge of the sword, devoting it and all that is in it, and its cattle with the edge of the sword. And thou shalt gather all its spoil into the midst of its broad place, and shalt burn with fire the city and all its spoil as a whole burnt-offering to Yahwe thy God. Let nothing of the devoted thing cling to thy hand, that Yahwe may turn from the fierceness of his anger and show thee mercy'<sup>1</sup>. Devotion to the ban is met with in the literary remains of one of Israel's neighbors. The famous Moabite Stone, or Mesha Inscription, records how the king of Moab succeeded in establishing his independence some forty years after the conquest of Omri<sup>2</sup>. In his campaign against the Israelites, Mesha took Ataroth and Nebo, exterminating the inhabitants of these towns in honor of Chemosh, the god of Moab. 'Omri, king of Israel, distressed Moab many years, because Chemosh was angry with his land. And his son succeeded him; and he also said, I will distress Moab. But I saw (my desire) upon him and upon his house, and Israel perished with an everlasting destruction. The men of Gad dwelt in Ataroth from of old, and the king of Israel built Ataroth for himself; but I fought against the city and took it. And I slew all the people of the city as a spectacle for Chemosh and for Moab. And Chemosh said unto me, Go, take Nebo from Israel; and I went by night, and I fought against it from the break of dawn until noon. And I took it, and slew all of them, seven thousand (men) . . and women, and . . , and female slaves, for to Ashtar-Chemosh I had devoted it'<sup>3</sup>.

The unity of the tribe and its subdivisions is preserved in the military arrangements described in the previous chapter. Regard is had to the prevailing tribal organization, the hosts

1) Deut. 13:15-17. 2) In 2 K 3:4 Mesha is responsible to Ahab, the son of Omri, for the payment of an annual tribute amounting to a hundred thousand lambs, in addition to the wool of a hundred thousand rams. 3) Cf. Paton, *Early History of Syria and Palestine*, 215.

of Israel being constituted according to tribes. These tribal hosts, as we have seen, are numbered by their clans and fathers houses. They camp and march together according to a fixed order<sup>1</sup>. In Numbers 24:1ff. Balaam, turning to the wilderness, sees from the vantage ground of his own environment all Israel encamped according to their tribes. It appears, however, that it was extremely difficult, even in the earliest stages of the conquest, to maintain the unity of the tribes in matters of national importance. The proposal of the Gadites and Reubenites, adverted to in Numbers 32:1ff., clearly indicates that the interests of these two tribes are preferred by the men of Gad and Reuben to the common interests of the tribes of Israel. The reason for this preference is not far to seek: the feeling of solidarity, aside from any geographical considerations, would be more intense among the members of the individual tribe than among the federated tribes of Israel. 'And Moses said to the Gadites and to the Reubenites, Shall your brethren go to war, whilst ye settle here? And they replied, We will build sheepfolds here for our cattle, and cities for our (wives and) children; but we will equip ourselves hastening before the Israelites until we have brought them unto their place'. Moses accepts the explanation, saying to the tribal heads of Israel, 'If the Gadites and the Reubenites will pass with you over Jordan, and the land shall be subdued before you, then ye shall give them the land of Gilead for an inheritance. But if they will not pass over with you equipped for battle, they shall have an inheritance among you in the land of Canaan.' Joshua 4:1ff. records the setting up of two sets of twelve stones each, the one in the midst of the Jordan, and the other at Gilgal, commemorating the crossing of the Jordan by the twelve tribes of Israel. Gilgal is used by Joshua and his forces as a base of operations in their conquest of Jericho<sup>2</sup> and Ai<sup>3</sup>. Joshua 10 describes the defeat of a coalition of Amorite kings at Gibeon. The work of Joshua, however, was largely undone by the conditions of settlement. The incompleteness of the conquest is attested by the book of Judges, according to which the best and most fertile parts of the country, and above all the formi-

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1) Num. 1—2.

2) Josh. 6.

3) Chap. 8.

dable array of cities with their strong fortifications, impregnable to the rude military art of the invaders, remained in possession of the native population. Manifestly, the subjugation of the land proceeded along tribal lines. The occupation of the territory assigned to the tribes appears to have been left to the initiative of each tribe. Occasionally one or more tribes combined their forces in one common effort against the enemy, as in the case of Judah and Simeon. 'The tribe of Judah said to their kinsmen of Simeon, Go with us into the territory allotted to us, that we may fight against the Canaanites, and then we will go with you into your territory. So the Simeonites went with them<sup>1</sup>.' Similarly, the tribes of the house of Joseph<sup>2</sup> went up to Bethel and conquered it<sup>3</sup>. Pressure from without sometimes led to the consolidation of individual tribes, or of small tribal groups. When the Canaanite confederacy under the leadership of Sisera began to threaten the very existence of the Israelites, Deborah appears on the scene and endeavors to unite the scattered tribes by an appeal to their common faith in Yahwe. She recalls the victories of the past, urging them to come to the aid of Yahwe, going forth from Seir to battle for his people<sup>4</sup>. Thus Deborah "revived the Mosaic teaching, which through the occupation of Canaan was in danger of being forgotten and saved Israel from losing the measure of religious and political unity that it had already attained<sup>5</sup>." At this juncture the chief determining cause of unity was the common danger to which the people of Yahwe were exposed. But the partial response to the call of the prophetess shows that the tribes were in a state of disunion and lacked common patriotism. Only six of the tribes, — Ephraim, Benjamin, Manasseh<sup>6</sup>, Zebulun, Issachar, and Naphtali, come to the rescue, and defeat the confederacy in the valley of Kishon, thus passing victoriously the crisis of extermination by the Canaanites. The remaining tribes are conspicuous by their absence. 'By Reuben's brooks great were the resolves! Why didst thou sit among the sheepfolds, to

1) Judg. 1:3. In chap. 4, Zebulun and Naphtali take the field against Jabin, king of Hazor. 2) viz., Ephraim and Manasseh, Benjamin, and perhaps Issachar. 3) Judg. 1:22—25. 4) 5:4; Deut. 33:2; Hab. 3:3 ff.; cp. Num. 10:35; 21:14; 1 S. 14:6, 23; 18:17; 25:28. 5) Paton, op. cit., 159. 6) represented by Machir, one of the principal clans of Manasseh.

hear the pipings for the flocks? By Reuben's brooks great were the deliberations! Gilead<sup>1</sup> remained beyond the Jordan; and Dan, why does he stay aloof by the ships? Asher sat still by the sea shore, and remained by his landing places<sup>2</sup>. The writer of the poem ignores entirely the tribes of Judah, Simeon, and Levi. Apparently, there was a lack of cohesion and unity in the relations of the tribes to each other. Bitter intertribal jealousies culminating at times in actual conflicts are not unknown in the history of this period<sup>3</sup>. Not infrequently one or more tribal groups would be obliged to battle with the enemy on their own initiative, owing to the reluctance of the neighboring tribes to come to the assistance of their oppressed kinsmen. 'The Ephraimites said to Jephthah, Why didst thou go over to attack the Ammonites, and didst not summon us to go with thee? And Jephthah replied, The Ammonites oppressed us sorely; and when I called to you, ye did not deliver me from them. And when I saw that ye were not going to help me, I took my life in my hand, and passed over to the Ammonites, and Yahwe delivered them into my power<sup>4</sup>.' Samson in like manner gets no support from the tribe of Judah in his struggles with the Philistines. On the contrary, the men of Judah bind the Danite, who had taken refuge in a rocky fastness in Judah, and deliver him into the hands of his enemies<sup>5</sup>. What we find in the Judges period is a series of tribal heroes, contending for the rights of their respective tribes against foreign invasion. The prestige gained from successful exploits of this kind brought to the deliverer of a given district a two-fold function, viz., military leadership and the arbitration of disputes. The more important of these 'Judges' are Gideon and Abimelech, Jephthah and Samson. According to Judges 6-8, Gideon, or Jerubbaal, achieves a remarkable victory over the Midianites, who on several occasions had robbed the peasants of the fruit of their toil leaving them almost destitute. It was in the course of one of these annual forays that two of Gideon's brothers were slain at Mount Tabor. To avenge their blood, and to put an end to the periodic<sup>6</sup> incursions of the Midianites,

1) Gad. 2) Judg. 5:15-17. 3) 8:1-3; 12:1ff. 4) 12:1, 2, 3.

5) 15:9ff. 6) Generally at the time of harvest.

Gideon summons his kinsmen of Abiezer, also the members of his own tribe, Manasseh, together with the tribes of Asher, Zebulun, Naphtali, and Ephraim. By the application of a singular test his army of forty-two thousand is reduced to three hundred picked men. Taking up the war-cry, 'For Yahwe and for Gideon,' the three hundred men fall upon the hordes of Midian by night; a panic ensues in the enemy's camp, which breaks up in wild flight. At Gideon's request the Ephraimites pour down from their highlands and intercept the fleeing Midianites at the fords of the Jordan, slaying great numbers of them when they attempted to pass. The two chiefs, who had slain the brothers of Gideon, are captured and put to death. Returning in triumph, Gideon carries out his threat of vengeance upon the men of Succoth and Penuel, because of their refusal to furnish him with food for his hungry band. Out of gratitude for this deliverance from the yearly inroads of the predatory sons of the desert, 'The men of Israel said unto Gideon, Rule over us, for thou hast delivered us from the power of Midian. But Gideon replied, I will not rule over you; Yahwe shall rule over you.' His only request is that the golden earrings of the captives be given him; and of the gold he makes an ephod, or image of Yahwe, which he sets up in his ancestral city of Ophrah. The inference is that he becomes the local ruler over parts of Manasseh and Ephraim, maintaining at Ophrah the humble court of a tribal chieftain and numerous wives. After the death of Gideon, his seventy sons succeed to his influence in the city of Ophrah and in central Ephraim. Whether or not the rule of Jerubbaal approached a tribal kingdom is uncertain. At any rate, his political power was of sufficient importance to become the subject of dispute among his sons<sup>1</sup>. It so happened that one of them, Abimelech, had through his Shechemite mother inherited the despotic ideals of government, which had found concrete expression in the city-states of the Amorites. To Abimelech the divided authority of the little Hebrew 'democracy' in Ophrah was intolerable. He therefore persuaded his mother's kinsmen to support him in his endeavor to transfer the seat of government from Ophrah to

1. 9:1 ff.



Shechem, the understanding being that the new seat of authority was to be an approximation to the city-monarchies of the Amorites. 'Which is the better for you, that seventy men should rule over you — all the sons of Jerubbaal — or that one man should rule over you? Remember, besides, that I am your bone and your flesh<sup>1</sup>. So his mother's kinsmen spoke in his behalf to all the citizens of Shechem, repeating what he had said, and the citizens were persuaded to follow Abimelech; for they said, He is our kinsman.' They agree to furnish him with money out of the temple treasury of Baalberith. With this money he hired a band of ruffians, and going to his father's home at Ophrah, he slew seventy of his half-brothers. 'There was left only Jotham, Jerubbaal's youngest son, who had hidden himself. And all the citizens of Shechem assembled, and made Abimelech king.' The sovereignty of Abimelech extended not only over Shechem but also over the Israelites in the hills near the city. His reign of three years is marked by tyranny, dissension, and bloodshed. The Shechemites soon discovered that the ambitious ruler was more than half Israelite in his sympathies. But the attempt to throw off his onerous yoke proves abortive; the insurgents are defeated, and Shechem is razed to the ground. He did not long enjoy the fruits of this victory; he himself dies ingloriously at the siege of Thebez as the result of a fatal injury caused by a millstone thrown by a woman from the roof of the tower. Thus comes to an end the tribal kingdom in the heart of Ephraim, owing to a lack of harmony between Israelite and Amorite. Out of it their might have grown under more favorable conditions a national kingdom, but the people were not ripe for it. Its realization, for the present at least, was seemingly abhorrent to the political ideals of the Hebrews. With the valorous deeds of Jephthah the scene shifts from central Palestine to the trans-Jordanic regions of Gilead. The hard-pressed Gileadites, unable to find a competent leader at the time of the Ammonite invasion, said to one another, 'Who is the man that will begin the war with the Ammonites? He shall be chief of all the inhabitants of Gilead<sup>2</sup>.' In their distress it occurs to them that Jephthah, the illegitimate half-brother of

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1) i. e., your own flesh and blood.      2) 10:18.

the sons of Gilead, who had been driven from home to live the life of an outlaw, possessed the necessary qualities of leadership 'And the elders of Gilead said unto Jephthah, Come and be our commander, and let us fight against the Ammonites. Then Jephthah went with the elders of Gilead, and the people made him chief and commander over them<sup>1</sup>.' The rehabilitated outlaw won a great victory, pursuing the Ammonites into their own territory, and taking from them twenty cities<sup>2</sup>. Thereupon the victorious chieftain returns to Mizpah of Gilead, where he establishes himself after the manner of a tribal *shaykh*, whose leadership in time of war is undisputed. As already indicated, the jealousy of the Ephraimites who inveigh violently against him, accusing him of selfish ambition in ignoring them in the conflict with Ammon, soon marred the glory of Jephthah's victory over the Ammonites. Jephthah, unlike Gideon, accepts their implied offer of battle; he assembles his tribesmen and inflicts a most telling defeat upon the leading tribe of Ephraim<sup>3</sup>. Samson, the Danite, differs from either Gideon, or Jephthah, in that he does not undertake on any large scale the expulsion or subjugation of organized hostile forces threatening the security of his people. What he attempts in this direction is nothing more than a single-handed combat with the confederated Philistine tribes, located at Gaza, Gath, Ashkelon, Ashdod, and Ekron. He excels, by virtue of his gigantic strength, in the performance of heroic deeds, resulting in the wholesale destruction of his enemies without affecting to any appreciable degree the political status of his oppressed tribesmen<sup>4</sup>. The story of Samson marks a convenient transition from the border-warfare of Israel's champion to the heroic struggles of a united people with the aggressive Philistine power in the west. One of the outstanding features of the Judges period, as we have seen, is the unfortunate disunion of the tribes. Inferentially, it was the love of tribal freedom that prevented the concentration in some strong hand of all the scattered energies of this period.

• That the personal independence of the Hebrew freeman might at times approach a condition of anarchy is not improbable. The author of Judges 21:25 observes, 'In those days there was

1) 11:5, 6, 11.    2) 11:32 ff.    3) 12:1 ff.    4) 14:19; chaps. 15—16.

no king in Israel; every man did that which was right in his own eyes<sup>1</sup>. What was needed was the unifying principle of a central authority. Somewhat later it was the pressure of hostile groups outside of Israel that helped to bring about the desired result. The national kingdom owes its inception for the most part to the aggressions of the Philistines, Ammonites, and Amalekites. The most formidable of these oppressors were the Philistines, who almost succeeded in bringing the Hebrews to the verge of destruction. In the war with the Philistines, recorded in 1 Samuel 4, Israel is defeated. Inspired by the presence of the ark of Yahwe, a second engagement is fought which proves even more disastrous than the first. The sacred palladium that had so often pointed the way to victory in the days of Moses and Joshua, fell into the hands of the Philistines; the temple at Shiloh was destroyed, the people were disarmed, and made tributary. Under Saul a struggle for freedom begins. It is related that the tribal heads of Israel assembled and came to Samuel at Ramah, demanding a permanent ruler and leader in war. 'A king shall be over us, that we, too, may be like all the nations, and that our king may judge us, and go out before us and fight our battles<sup>2</sup>.' Samuel recognizes in Saul the man of the hour, and secretly anoints him king. 'He shall deliver my people out of the hand of the Philistines<sup>3</sup>.' Prior to his consecration to the kingly office, Saul, distinguished by a fine reserve, says to Samuel and his guests on the occasion of a sacrificial meal, 'Am I not a Benjamite, of the smallest of the tribes of Israel, and is not my clan the most insignificant of all the clans of the tribe of Benjamin<sup>4</sup>?' According to 1 Samuel 10:17ff., the selection of Saul by the aged seer is followed by a public choice of Israel's ruler at Mizpah. 'And Samuel called the people together to Yahwe at Mizpah, and said, Present yourselves before Yahwe by your tribes and by your 'clans'<sup>5</sup>. So Samuel brought all the tribes of Israel near, and the tribe of Benjamin was taken. Then he brought the tribe of Benjamin near by their clans, and the clan of the Matrites was taken; and he brought near the clan of Matri man by

1) 17:6; cp. 18:1; 19:1.      2) 1 S. 8:20; cp. vv —5.      3) 9:16.  
4) v. 21.      5) Lit., 'thousands.'

man<sup>1</sup>, and Saul the son of Kish was taken. And all the people shouted, 'May the king live!' The newly elected king retires to his home with his commission, ready to act when an emergency demands intervention. But there were those who said, 'How shall this fellow save us?' A month later Nahash, king of Ammon, besieges the city of Jabesh in Gilead, and the inhabitants agree to surrender. The insolent Ammonite then states his terms, which include the boring out of every man's right eye for a reproach to Israel. A respite of seven days is granted to the Jabeshites in which to solicit help from their kinsmen. The messengers of the beleaguered city come to Gibeah, and Saul, who was returning from ploughing, challenges the warriors to follow him, and bring relief to Jabesh-Gilead. 'And he took a yoke of oxen, and cut them in pieces, and sent them throughout all the territory of Israel by the hand of messengers, saying, Whosoever cometh not forth after Saul, so shall it be done unto his oxen<sup>2</sup>.' The tribes arise 'as one man'; the Ammonites are taken by surprise, and scattered to the winds. 'And the people said unto Samuel, Who is he that says, Shall Saul reign over us? Then said Samuel, Come, and let us go to Gilgal, and renew the kingdom there<sup>3</sup>.' The people, exultant over this victory, proceed to the well-known sanctuary in the Jordan valley, there to celebrate a feast of coronation. As the head of the tribes of Israel<sup>4</sup>, Saul's first concern was to recruit an army of three thousand men, preparatory to his approaching conflict with the Philistines. He attacks the enemy with great vigor, and succeeds in winning back for a time the freedom of Israel. But the struggle against Philistine oppression, ending in disaster, brings to the fore a man of the house of Judah, noted for his adroitness, military talent, and popularity. After the death of Saul, David went to Hebron, where he was anointed king over the tribe of Judah under Philistine suzerainty. Instead of recognizing Saul's rival as the king of all Israel, the northern tribes rallied to the support of Ishbaal, the only surviving son of the ill-fated king. However, the events of the next seven years convinced the elders of the northern tribes that the time had come to confer upon David the government of the lands

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1) So Gk.

2) 11:7.

3) vv. 12, 14.

4) 15:17.

of Saul<sup>1</sup>. The work begun by the latter was completed by the former, the Philistines and other neighboring peoples being conquered. David's later years were troubled with Absalom's ambitious designs upon the kingdom. The heir apparent made it his habit 'to rise early and stand beside the way which led to the gate, and every man that had a case to come before the king for judgment, Absalom would call to himself, and say, Of what city art thou? And when he replied, Thy servant is of one of the tribes of Israel, Absalom said unto him, Oh, that someone would make me judge in the land, that to me might come every man that hath any suit or cause, and I would do him justice!' Absalom, moreover, 'sent emissaries throughout all the tribes of Israel, saying, When ye hear the sound of the trumpet, then ye shall say, Absalom hath become king in Hebron<sup>2</sup>.' The sequel to this unhappy incident bears witness to the unconquerable rivalry between the northern and southern tribes. The strife between Judah and Israel over the prerogative of leadership in connection with the monarch's return furnishes the occasion for the rebellion of the Benjamite Sheba. 'The men of Israel came to the king, and said, Why have our kinsmen, the men of Judah, stolen thee away, and brought the king and his household over the Jordan, when all of David's men are his people? Then all the men of Judah answered the men of Israel, Because the king is near of kin to me. Why art thou angry at this thing? And the men of Israel answered the men of Judah, and said, I have ten shares in the king, furthermore I am the firstborn rather than thou; why then didst thou despise me?' Sheba now raises the standard of revolt, carrying away with him the tribes of Israel. 'He blew on a trumpet, and cried, We have no share in David, neither have we any part in the son of Jesse; every man to his tents, O Israel<sup>3</sup>!' With the death of the son of Bichri, peace is once more restored in Israel. David was followed on the throne by his son Solomon, who imposed upon his subjects a most exacting system of political taxation and of forced labor. Solomon's division of the land into twelve administrative districts virtually overlooks the old tribal distinctions. The preferential treatment

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1) 2 S. 1:1—5, 5.

2) 15:2, 3, 4, 10.

3) 19:41, 42, 43; 20:1.



shown by the king to the members of his own tribe<sup>1</sup>, crystallized the old tribal jealousy latent in the north into bitter discontent. The revolt of Jeroboam meets with the indorsement of Ahijah, who did not hesitate to show his hostility to the prevailing oppression. Ahijah, having clad himself with a new garment, took hold of the garment, 'and rent it in twelve pieces. And he said to Jeroboam, Take for thyself ten pieces; for thus saith Yahwe, the God of Israel, Behold, I will rend the kingdom out of the hand of Solomon, and will give ten tribes to thee'<sup>2</sup>. The insurrection was suppressed, however, and the aspiring labor leader of the house of Joseph fled to Egypt. Upon the death of Solomon, Jeroboam waited for a favorable opportunity to return to his own country, and put himself at the head of the discontented. Before accepting Rehoboam as their king, the representatives of the northern tribes demanded that he come to Shechem, and state to the assembly the exact nature of the succession. Yielding to the lure of despotic power, Solomon's successor replied, 'My father made your yoke heavy, but I will make your yoke still heavier; my father chastized you with whips, but I will chastize you with scourges'. On hearing this the northern tribes asserted their political freedom, saying, 'What share have we in David? We have no part in the son of Jesse! To your tents, O Israel! Now see to thine own house, O David!'<sup>3</sup> Thus the smouldering resentment of the northern tribes had burst into a flame, and the life-work of David and of Solomon was almost destroyed at a single blow. The union of the tribes did not last long. Jeroboam was elected king by the tribes of Israel, Rehoboam being king only of Judah and of the territory of Benjamin in the immediate vicinity of Jerusalem. Henceforth, until the exile, the kingdom of the Davidic dynasty is known under the tribal name of Judah, the northern kingdom retaining for two hundred years the old national name of Israel.

The ancient clan was a political unity. A good example of clan solidarity is found in Rahab's interview with the spies, recorded in Joshua 2:12ff. Without going into the preliminary details, we cite the following: 'Swear to me by Yahwe, since I have dealt kindly with you, that ye also will deal kindly with

1) *Soc. Leg. Prim. Sem.*, 210.

2) 1 K. 11:30, 31.

3) 12:14, 17.

my father's house, and spare the lives of my father, and my mother, and my brothers, and my sisters, and all that belong to them. The men said to her, When we come into the land, tie this scarlet thread to the window, and gather to thee into the house thy father, and thy mother, and thy brothers, and all thy relatives . . .<sup>1</sup> So the young men who had served as spies went in, and brought out Rahab, and her father, and her mother, and her brothers, and all her clan'.<sup>2</sup> According to Judges 1:22—26, the Josephites, who had invaded the central highlands, 'went up to Bethel, and their scouts saw a man coming out of the city, and said to him, Show us the way to enter the city, and we will show thee mercy. And when he showed them the way to enter the city, they put the people of the city to the sword; but they let go the man and all his clan'. Conversely, the whole priestly clan of Nob is hewn down in cold blood for Ahimelech's supposed disloyalty to King Saul<sup>3</sup>.

The foundations of national organization having been partly laid under the leadership of Joshua, the people again broke up into tribes and clans, each pursuing its own interests. Only pressure from without could check in a measure the centrifugal forces of Hebrew tribalism, and bring about a more or less permanent union among the loosely allied tribal units. One of the great political factors in early times is the clan group. Indeed, it is the sentiment of loyalty to the clan group, which figures most prominently in the history of this period. The idea of clan solidarity finds frequent expression in early Hebrew literature. For instance, in Judges 6:11 ff., the messenger of Yahwe appears to Gideon and commissions him to free Israel from the yearly inroads of the Midianites, saying, 'Go, in this strength of thine, and deliver Israel from Midian. But he replied, I pray, sir, how should I deliver Israel? My clan<sup>4</sup> is the poorest in Manasselah, and I the least in my father's house. And Yahwe said unto him, Thou shalt smite the Midianites as one man'. When in the course of one of these plundering incursions some of the members of the clan of Abiezer were killed, Gideon and his fellow clansmen

1) Lit., 'and all the father's house.'

2) Read *mishpahtah*, instead

of *mishpehotcha*, as in the Greek, Syriac, and Latin versions; Josh. 6:23.

3) 1 S. 22:6—23. Cf. Smith, *Samuel*, 205 ff.

4) Lit., 'my thousand.' Cf. Moore, *Judges*, 186; Nowack, *Richter*, 63.

took to arms to wreak blood-vengeance upon the murderers. The marauding chieftains are captured and slain in retaliation for the death of Gideon's kinsmen, for 'they were my brothers, my mother's sons!' <sup>1</sup> Further, Abimelech is created king of Shechem with the aid of his mother's clansmen. 'And Abimelech, the son of Jerubbaal, went to Shechem to his mother's brethren, and spoke to them and to the whole clan to which the house of his mother's father belonged, saying, Put this question to all the citizens of Shechem, Which is better for you? that seventy men should rule over you, or that one man should rule over you? Remember, moreover, that I am your bone and your flesh'. The citizens of Shechem 'were persuaded to follow Abimelech, for they said, He is our brother' <sup>2</sup>. In the subsequent revolt of the Shechemites against the authority of Abimelech, Gaal and his clansmen <sup>3</sup> take the initiative <sup>4</sup>. Somewhat later the establishment of a national monarchy is entrusted to the Benjamite Saul, in whom the aged seer had discovered a man of the proper qualifications for the kingship. Says the prophet, 'To whom belongeth all that is desirable in Israel? Doth it not belong to thee, and to thy father's house? And Saul answered and said, Am I not a Benjamite, of the smallest of the tribes of Israel, and is not my clan the most insignificant of all the clans of the tribe of Benjamin?' <sup>5</sup> When Saul offers one of his daughters to David in marriage, the son of Jesse replies, 'Who am I, and what is my sept <sup>6</sup>, my father's clan in Israel, that I should be the king's son-in-law?' <sup>7</sup> The increasing popularity of the Judean warrior arouses Saul's jealousy, and David is obliged to flee for his life to the stronghold of Adullam. The members of his clan resort hitherward in order to escape the wrath of Saul. With David outlawed they would no longer be safe in Bethlehem <sup>8</sup>. By his marriage with Abigail, Saul's political rival becomes allied with an influential clan of the land of Judah. Toward the end of his reign, David, fleeing before Absalom, 'came to Bahurim, and behold, there came out from there a man of the clan of the

1) 8:19.    2) 9:1, 2, 3.    3) The Hebrew term for 'brother' may also be translated 'kinsman,' 'clansman' (Moore, *op. cit.*, 254ff.), 'fellow tribesman' (Nowack, *op. cit.*, 89ff.).    4) 9:26ff.    5) 1 S. 9:20, 21.  
6) But see Nowack, *Samuel*, 96.    7) 1 S. 18:18.    8) 22:1; cp. 23:23. Cf. Smith, *op. cit.*, 203.

house of Saul, whose name was Shimei, constantly cursing as he came'. Seeing that the king was about to return in triumph to Jerusalem, Shimei, accompanied by a thousand Benjamites, went down to the Jordan valley with the men of Judah to meet David. 'And he said to the king, I have sinned; behold, I have come down first of all the house of Joseph to meet my lord the king. And the king said unto Shimei, Thou shalt not die'<sup>1</sup>. The temporary defection of the northern tribes from the house of David must be laid to the charge of Sheba, whose immediate following was made up of his own clan<sup>2</sup>. As a descendant of the house of Saul, Sheba evidently assumed the role of a claimant to the throne of the northern kingdom. It appears that both Saul and Sheba belonged to the clan of Becher<sup>3</sup>.

The political solidarity of the 'house' follows from its relation to the clan, the former being an integral part of the latter. Rahab's interview with the spies, already quoted, is a case in point. In 1 Samuel 20:14—15 Jonathan entreats the future king to spare his descendants. 'Thou shalt show me the kindness of Yahwe. And if I should die, thou shalt not withdraw thy kindness from my house forever'<sup>4</sup>. The outlaw chief, fearing that his persecutor would take great pains in seeking out the members of Jesse's household, finds asylum for his parents among the neighboring Moabites<sup>5</sup>. After his experience at Engedi, Saul, overcome with emotion, adjures David not to cut off his posterity. 'Swear now therefore unto me by Yahwe, that thou wilt not cut off my descendants after me, and that thou wilt not destroy my name from my father's house. So David swore unto Saul'<sup>6</sup>. The assassins of Saul's successor 'brought the head of Ishbaal unto David to Hebron, and said unto the king, Here is the head of Ishbaal, the son of Saul thine enemy, who sought thy life. Yahwe hath avenged my lord the king this day on Saul and his descendants'<sup>7</sup>. The murderers, instead of being rewarded as they had expected, are put to death. Finally, Haman is hanged upon the gallows which he had erected for Mordecai, his political rival. 'And Esther said, If it please the king, let Haman's ten sons be hanged upon the gallows. And the king commanded it so to be done'<sup>8</sup>.

1) 2 S. 16:5: 19:19, 20.      2) 20:1—2, 6, 14. Cf. Nowack, *op. cit.*, 235.

3) See Gunkel on Gen. 46:21.

4) Cp. 2 S. 9:1 ff.

5) 1 S. 22:3—5.

6) 24:21, 22.

7) 2 S. 4:8.

8) Esth. 9:13, 14.

## Chapter IV

**Tribal Solidarity and Social Morality.**

Hebrew society is not only a religious and political unity; it is also a social unity. Examples of social solidarity are not wanting in early literature. In Genesis 20:1ff., for instance, Yahwe says to Abimelech, 'Thou must die because of the woman whom thou hast taken. But Abimelech had not come near her, and he said, Lord, wilt thou indeed slay an innocent nation? Then Abimelech called Abraham, and said unto him, What hast thou done unto us? and wherein have I sinned against thee, that thou hast brought on me, and on my kingdom so great a sin?' Similarly, the deception of Isaac, related in Genesis 26:6—11, is met with the complaint, 'What is this thou hast done unto us? How easily one of the people might have cohabited with thy wife, and thou shouldest have brought guiltiness upon us!' Again, in the case of an untraced murder it becomes necessary for the community to make solemn ceremonial disavowal of the crime committed by one or more of its members. This done, the elders of the city nearest to the scene of the murder shall say, 'O Yahwe, clear from guilt thy people Israel, which thou hast ransomed, and set not the guilt for innocent blood in the midst of thy people Israel. And their blood-guilt shall be expiated'<sup>1</sup>. So, again, the infamous crime of the men of Gibeah involves not only the whole tribe of Benjamin but all Israel as well. According to Judges 19—21, the Levite surrenders to these moral degenerates his concubine, and in the morning finds her dead on the threshold. 'When he reached home, he took a knife, and laid hold of his concubine, and divided her into twelve pieces, and sent them throughout all the borders of Israel; because they had committed a wanton crime in Israel'. The tribes, aroused to a sense of the awful degeneration of morals, especially in cities inhabited by a large proportion of the old Amorite population, unite in a demand upon the murderers' tribe for their punishment. The Benjamites, however, refuse to give up their

1) Deut. 21:8.



brethren for punishment. The ensuing attack is led by the tribe of Judah, to which the concubine belonged, and the crime is expiated by the reduction of the tribe of Benjamin to a remnant of six hundred men. Wives having been provided for the remaining Benjamites, the Israelites dispersed to their homes, 'each to his tribe, and clan; each to his own possession'.

The feeling of tribal solidarity, in the incident just related, accounts for the refusal of the Benjamites to give up their brethren for punishment. In time of war especially, the tribe and its subdivisions were indissolubly united, and vice versa. The records indicate that the first tribe appealed to by the valiant leader of the Abiezrites was the tribe of Manasseh<sup>1</sup>.

Clan morality finds expression in the primitive custom of blood-revenge. As an association of 'brothers'<sup>2</sup>, the clan has an undivided life<sup>3</sup>. The suffering of a fellow clansman is felt by all the members of the brotherhood<sup>4</sup>. Thus the murder of a clansman by a member of another clan calls for prompt retaliation. By primitive usage the duty of blood-revenge devolves upon the members of the assailed clan. Under the old conception of collective responsibility, any member of the slayer's clan could be slain in expiation of a murder, inasmuch as the crime rested not upon the guilty man alone but upon his entire clan. But if the slayer and the slain are both members of the same clan, the rule does not apply. "By the rules of early society, if I slay my kinsman, whether voluntarily or involuntarily, the act is murder, and is punished by expulsion from the kin; if my kinsman is slain by an outsider I and every other member of my kin are bound to avenge his death by killing the manslayer or some member of his kin . . . The duty of blood-revenge is paramount, and every other obligation is dissolved as soon as it comes into conflict with the claims of blood"<sup>5</sup>. Clan sentiment demands that Gideon and his clan take to arms and exact a corresponding penalty from the plundering Midianites who had slain several

1) Judg. 6:34-35. 2) Gen. 24:27; 29:15; Judg. 9:3; 1 S. 20:29. 3) Robertson Smith observes, "In a case of homicide Arabian tribesmen do not say, 'The blood of M. or N. has been spilt,' naming the man; they say, 'Our blood has been spilt'" *Rel Sem.*<sup>1</sup>, 256 4) Cp 1 Cor. 12:25, 26; Rom 12:5; 1 Co.: 10:17; Eph. 1:23; 5:30. 5) Robertson Smith, *op. cit.*, 254.

of their kinsmen, for 'they were my brothers, my mother's sons!' <sup>1</sup> In 2 Samuel 14:1ff., the wise woman of Tekoah whom Joab had entrusted with a most delicate diplomatic mission, says to king David, 'Verily, I am a widow. And your maidservant had two sons, and these two quarrelled in the field when there was no one to interfere, and one smote the other and killed him. And, behold, the whole clan has risen up against thy maidservant and they said, Deliver up the slayer of his brother, that we may slay him for the life of his brother whom he has killed, and we will destroy the heir<sup>2</sup>. Thus they will quench my remaining coal so as to leave to my husband neither name nor remnant upon the face of the earth'. Not satisfied with the promise of protection, the woman continues, 'Let the king swear by Yahwe thy God, not to let the avenger of blood destroy, and not to let them exterminate my son. And he said, As Yahwe liveth, not a hair of thy son shall fall to the ground'. Here the exaction of the forfeited life is left to the brothers and descendants of the widow's husband. Immediate responsibility for the vindication of the clan's rights rests upon the *go'el had-dam*<sup>3</sup>, the 'avenger of blood'. That the hand of the customary clan justice is stayed by royal decree is another indication of the centralizing tendency of a well organized monarchy.

Anciently, bloody inter-clan feuds, in which whole clans would be implicated, were of common occurrence. In the retaliatory stage<sup>4</sup> of society, the primitive group holds together for offensive and defenses purposes under the impulse of external needs. One of the most pressing needs of the time was the protection of life and property; and this is assured by belonging to a clan. The individual clansman felt quite secure within the circle of the protecting brotherhood, the welfare of the former being merged in that of the latter, owing to the intense feeling of clan solidarity. The old clan system is still a vital factor in certain localities as late as the days of Elisha. Thus the Shunammite, enjoying the protection of a powerful clan<sup>5</sup>, has no

1) Judg. 8:19. 2) Cp. Sulzberger, *The Ancient Hebrew Law of Homicide*, 93—95, 104—105. . 3) 'the federal executioner;' so Sulzberger, *op. cit.*, 94. 4) The *lex talionis*, according to Sulzberger (p. 2) "is one of the early stages of what we now call international law, which even yet knows no final arbitrament but the sword." 5) Cp. Job 31:34.

need of royal patronage. 'What is to be done for thee? Shall we commend thee to the favor of the king, or to the commander of the army? And she answered, I dwell in the midst of my clan' <sup>1</sup>.

The ancient 'house' has a social solidarity. The members of such a 'house', as we have already pointed out, often shared a father's fate, even when they were entirely innocent. Yahwe, for instance, 'plagued Pharaoh and his house' <sup>2</sup> with great plagues on account of Sarah, the wife of Abram' <sup>3</sup>. So, too, Abimelech and the inmates of his harem are afflicted by Yahwe until Sarah is restored to her husband <sup>4</sup>. Again, in 1 Samuel 25:17, evil is determined against Nabal 'and against all his house, for he is such a base scoundrel that a man cannot speak to him'. The passage in Proverbs 17:13, 'Whoso rewardeth evil for good, evil shall not depart from his house', epitomizes the current notion of social morality. The same principle applies to the shedding of blood, 'And the woman of Tekoah said unto the king, My lord, O king, the guilt be on me and on my father's house; and the king and his throne be innocent' <sup>5</sup>. Again, every housetop must be provided with a parapet to prevent blood-guiltiness from resting on the house and its occupants <sup>6</sup>. Under the old group morality system, blood-guiltiness, unless atoned for by retaliation in kind, is inherited by the children and the children's children. To illustrate. In 2 Samuel 21:1ff., seven descendants of the house of Saul are slain for the misdeeds of their royal grandfather. The blood of Abner, we are told, 'shall come back upon the head of Joab, and upon the head of his descendants forever' <sup>7</sup>. The group morality system of the Old Testament is undoubtedly the outcome of the ancient conception of the household as a closely knit social unit.

1) 2 K. 4:13. Cf. Gesenius, *H. W. B.* (1905), p. 544. 2) 'him and the children of his house;' so Syriac Version. 3) Gen. 12:17. 4) 20:17-18. 5) 2 S. 14:9. 6) Deut. 22:8. 7) 1 K. 2:33; cp. 2:28ff.; 2 S. 3:29; Mtt. 23:35-36; 27:25; Acts 5:28; John 9:2.

## Chapter V

**Tribal Solidarity and Social Economy**

The tribe and its subdivisions are at the same time so many economic unities.

In Numbers 26:53—56 it is enacted that the land of Canaan shall be allotted to the several tribes in proportion to the numerical strength of each tribe. 'Among these tribes the land shall be apportioned as an inheritance according to the number of names. To the large tribe thou shalt give a proportionately large inheritance, and to the smaller tribe thou shalt give a proportionately small inheritance; to each one shall its inheritance be given according to the number of those who were numbered of each tribe. Notwithstanding the land shall be divided by lot: according to the names of their paternal tribes shall they inherit'. We are left to infer that the trans-Jordanic regions were assigned by Moses to the tribes of Reuben, Gad, and the half-tribe of Manasseh in accordance with the principle of apportionment laid down in the above instructions<sup>1</sup>. This at least is the view held by the author of Numbers 26:1 ff., as is clear from the inclusion of Reuben, Gad, and Manasseh in the enumeration of the twelve secular tribes, to which our passage is appended. The passage in Joshua 22:19 points in the same direction. Hearing of the possible defection of the eastern tribes from the common cause, the Israelites seek to remedy the situation by inviting the accused tribes to take up their abode in western Palestine. 'If the land of your possession be unclean, pass over to the land of Yahwe's possession, and receive a possession in the midst of us'. In such an event it is more than likely that the economic arrangements prevailing among the tribes west of the Jordan would hold good in the case of the eastern tribes. The two and a half tribes having been provided for by Moses in eastern Palestine, the land west of the Jordan is provisionally assigned to the remaining tribes. The chieftains of the tribes concerned shall assist Eleazar and Joshua in the distribution of the western territory, the

1) 32:1 ff.; Deut. 3:12 ff.; 29:7—S; Num. 34:13 ff.; Josh. 12:6; 13:8 ff.; 14:1 ff.; 18:7; 22:9, 19.

boundaries of which are described in Numbers 34:1 ff. 'This is the land which ye shall inherit by lot, which Yahwe commanded to give unto the nine and a half tribes'. According to the book of Joshua, provision is first made for the tribes of Judah, Ephraim, and Manasseh<sup>1</sup>. The undivided land is then surveyed and divided into seven portions, for which lots are cast at Shiloh on behalf of the seven tribes which had not yet received definite allotments. 'Joshua said unto the children of Israel, Take three men for each tribe, and I will send them, and they shall set out, and go through the land, and map it out into suitable inheritances for their tribes. The men went, and passed through the land, and mapped it out by cities in seven portions on a scroll, and they brought back their report to Joshua in camp at Shiloh. Then Joshua cast lots for them in Shiloh before Yahwe, and, there he divided the land among the children of Israel according to their divisions'. Accordingly, the tribes of Benjamin<sup>2</sup>, Simeon, Zebulun, Issachar, Asher, Naphtali, and Dan receive their allotment of territory<sup>3</sup>. Further, it is enacted that the secular tribes shall contribute to the Levites a proportionate share of their landed possessions, inasmuch as the priestly tribe had received no territorial possessions corresponding to those of the other tribes. In all forty-eight cities with their circumjacent pasture grounds are allotted to the Levites from the tribal possessions of Israel<sup>4</sup>. Finally, Ezekiel 45:8 provides that the princes of Israel 'shall no more oppress my people, but shall give the land to the house of Israel according to their tribes'.

The principle of apportionment laid down in Numbers 26:53—56 applies also to the tribal subdivisions. 'Ye shall enter into possession of the land by lot according to your clans. To the large clan ye shall give a proportionately large inheritance, and to the smaller clan ye shall give a proportionately small inheritance: whithersoever the lot falleth to any clan, it shall have its possession'<sup>5</sup>. The land, as already indicated, was apportioned tribe by tribe, and then to the various clans within the tribe. Thus Moses gave an inheritance to the tribes of

1) Chaps. 14—17. The tribal territories west of the Jordan are minutely defined. 2) Cp. Judg. 1:34; 18:1 ff. 3) Josh. 18—19. 4) Num. 35:1 ff.; Dent. 4:41—43; 19:1 ff.; Josh. 20—21; cp. Num. 18:20, 23, 24; Dent. 10:9; 18:1, 2; Josh. 13:14, 33; 14:1; 18:7; Ezek. 44:28. 5) Num. 33:54.



Reuben, Gad, and eastern Manasseh according to their clans<sup>1</sup>. Further, tribal territories are allotted by Joshua to 'the Judahites, Ephraimites, and Manassites according to their clans'<sup>2</sup>. Similarly, at Shiloh 'the lot of the tribe of the Benjamites came out according to their clans. The second lot came out for the tribe of the Simeonites according to their clans. The third lot came out for the Zebulunites according to their clans. The fourth lot came out for the Issacharites according to their clans. The fifth lot came out for the tribe of the Asherites according to their clans. The sixth lot came out for the Naphtalites according to their clans. The seventh lot came out for the tribe of the Danites according to their clans'<sup>3</sup>. Moreover, the dwelling-places of the tribe of Levi are allotted to the several clans composing the group. 'The lot came out for the sub-clans of the Kohathites, the sons of Aaron, who had by lot thirteen cities of the tribes of Judah, Simeon, and Benjamin. The 'rest of the Kohathites received by lot ten cities from the clans of the tribes of Ephraim, Dan, and the half-tribe of Manasseh. The Gershonites received by lot thirteen cities from the clans of the tribes of Issachar, Asher, and Naphtali, and from the half-tribe of Manasseh in Bashan. The subclans of the Merarites received by lot twelve cities from the tribes of Reuben, Gad, and Zebulun. The Israelites gave by lot unto the Levites these cities and the pasture-lands belonging thereto, as Yahwe had commanded through Moses'<sup>4</sup>.

In Joshua 17:3—10 the clans of Manasseh receive, on the basis of Numbers 27:1—11, ten allotments, apart from the land of Gilead and Bashan beyond the Jordan. Zelophehad, in the precedent referred to, had died in the wilderness, leaving five daughters but no sons. An appeal is made to the proper authorities for a readjustment of the laws of inheritance according to which only agnates were entitled to the succession. 'Then came near the daughters of Zelophehad, the son of Hephher, the son of Gilead, the son of Machir, of the clans of Manasseh, saying, Why should our father's name be withdrawn from among

1) Josh. 13:15—23, 24—28, 29—31.      2) 15:1, 12, 20; 16:5, 8; 17:2.

3) 18:11; 19:1, 10, 17, 24, 32, 40.      4) 21:4—8. Cf. 21:9ff. Cp. Ex 6:16ff.; 1 Chron. 6:1ff.

his clan because he hath no son? Give us therefore a landed possession among our father's clansmen<sup>1</sup>. So Moses laid their case before Yahwe. And Yahwe spake unto Moses, saying, Thou shalt transfer to them their father's inheritance'. The law in general is that if a man die without male issue, his daughter shall inherit the property. In default of both sons and daughters, his brothers shall inherit, failing these his paternal uncles, failing these the inheritance shall be given 'to the nearest kinsman in his clan, that he may possess it'. The law of succession as thus formulated would prevent the man's property from passing out of the clan; in other words, the landed possession of the clan, and, therefore, of the tribe to which the clan belonged, must be kept intact. Indeed, it is expressly stated<sup>2</sup>, that the inheriting daughters may not marry outside their tribe lest the equilibrium of tribal property be disturbed. 'The heads of the fathers' houses of the clans<sup>3</sup> of the sons of Gilead, the son of Machir, the son of Manasseh, came near and spoke thus in the presence of Moses and of the tribal princes of the Israelites, Yahwe commanded my lord to give the land by lot as an inheritance to the Israelites; and my lord was commanded by Yahwe to give the inheritance of Zelophehad, our brother, unto his daughters. If now they marry any of the sons of the other tribes of the Israelites, then shall their inheritance be withdrawn from the inheritance of our fathers, and added to the inheritance of the tribe to which they belong by marriage, thereby diminishing the lot of our inheritance. When the jubilee of the Israelites shall come, then their inheritance will be added to the inheritance of the tribe to which they belong by marriage; so shall their inheritance be withdrawn from the inheritance of our paternal tribe'. The decision of the lawgiver is that the daughters of Zelophehad 'may marry whom they like', provided they marry into one of the clans of their paternal tribe. Furthermore, 'every daughter who cometh into possession of an inheritance in one of the tribes of the Israelites, shall marry a man of the clan of her father's tribe, that each Israelite may possess the inheritance of his father, and that no inheritance may pass from one tribe to

1) 'brothers,' 'kinsmen.' 2) Num. 36:1—12. 3) Cp, 26:29—33; 27:1.

another; for each of the tribes of the Israelites shall cleave to its own inheritance'. Ordinarily, marriageable daughters so inheriting limited their choice to men of their father's clan. From the subsequent verses we learn that the daughters of Zelophehad married the sons of their paternal uncles<sup>1</sup>. Doubtless the choice made by these heiresses was in keeping with good custom. Adherence to the traditional precedent would render it impossible for ancestral property to pass from the clan and tribe respectively. 'They became the wives of men belonging to the clans of the sons of Manasseh; and so their inheritance remained in the tribe of their father's clan'. The desire to preserve the economic unity of the tribe limited marriage to one of the clansmen in the tribal group, the preference being given to a member of the father's clan. Without this modification in the law of succession, a considerable portion of the tribal possessions of Manasseh might have been permanently withdrawn by the operation of the law of inheritance then prevalent in Israel. It is important to note that the law of jubilee would not have prevented the permanent alienation of such property, since it would have passed out of the tribe, not by sale, but by inheritance.

The jubilee<sup>2</sup>, it will be observed, concerns itself primarily with the restoration of ancestral property, temporarily disposed of under the pressure of necessity. In the year of jubilee all transactions in landed property shall be revoked. 'Ye shall set apart as sacred the fiftieth year, and proclaim liberty<sup>3</sup> throughout the land to all its inhabitants; it shall be a jubilee for you, and every one shall return to his landed possession, and every one shall return to his clan'. Under no circumstances shall any portion of the clan's property become the object of sordid speculation. 'If thou sell any land to thy neighbor, or buy it of thy neighbor, ye shall not defraud one another. According to the number of years after the last jubilee thou shalt buy land from thy neighbor, and according to the number of crops until the next jubilee shall he sell to thee'. The whole transaction is to be governed by the value of the harvests to be reaped between the date of alienation and the next jubilee. The land

1) viz., their father's cousins.  
c.p. Ass. *duraru*, 'freedom.'

2) Lev. 25:8ff.

3) Heb. *deror*;

itself cannot be permanently alienated, either by deed or will, from its original possessors. Strictly speaking, all that is sold is the usufructuary right in the property. Under this theory the absolute ownership of private property does not exist. Thus a limit is set to the free disposal of landed property, held by the individual, or group, on lease from Yahwe. 'The land shall not be sold in perpetuity; for the land is mine<sup>1</sup>, and ye are strangers<sup>2</sup> and settlers with me. And in all the land of your possession ye shall grant a redemption for the land'.

The law of jubilee was intended to counteract the economic evils of peasant life, due to wars, unfavorable seasons, and other causes. Hence the necessity sometimes arose for a man to sell a portion of his landed estate. In that event the nearest agnate shall redeem the property. 'If thy brother grow poor, and sell some of his landed possession, his kinsman<sup>3</sup> who is next to him shall come, and redeem that which his brother hath sold'. Failing a kinsman the seller may exercise the same right before the next jubilee, in which case the price of redemption must be in proportion to the value of the unexpired lease. 'If a man have no one to redeem it, and he become rich and find sufficient means to redeem it, then let him count the years since its sale, and refund the value of the years still remaining to the man to whom he sold it, and return to his landed possession'. In default of redemption the land reverts in the jubilee to the man, who had consented to its alienation. 'But if he have not sufficient means to recover it for himself, then that which he has sold shall belong to the purchaser until the year of jubilee; and it shall be released in the jubilee, and he shall return to his landed possession'. The impoverished Israelite not infrequently sold himself and his children into servitude in payment of a debt. The debtor, who is compelled to sell himself into the service of a wealthy foreigner, may be redeemed at any time by one of his kinsmen, that is, if he be unable to purchase his own freedom. 'If a stranger or settler with thee become rich, and thy brother beside him grow poor, and sell himself to the stranger or alien residing with thee,

1) In Gen. 47:13-26 the land belongs to Pharaoh, the offspring of the sun-god. Cp. *Soc. Leg. Prim. Sem.*, 167-169. 2) 'resident aliens.'  
3) *goël*.

or to a descendant of the foreigner's clan, he may be redeemed after he has sold himself; one of his brothers may redeem him, or his uncle, or his cousin, may redeem him, or one of the nearest blood relations<sup>1</sup> of his clan may redeem him; or, if he become rich he may redeem himself. The price of redemption depended almost entirely on the length of time already served by the insolvent debtor. "To approximate the sum required for redemption it was necessary to divide the original purchase-price by the number of years intervening between the first year of servitude and the year of jubilee, and to multiply the quotient by the number of years to run between the redemption and the jubilee, according to a fixed scale of wages ordinarily paid to hirelings. The difference between this amount and the original purchase-price represents the man's wages whilst in servitude"<sup>2</sup>. To secure his release before the year of jubilee the debtor must refund, either personally or through his kinsman, the value of his services for the years that still remain. In default he and his children shall go free in the year of jubilee. Further, it is provided that the year of jubilee shall be the maximum limit of service in the case of a Hebrew, who has sold himself for a debt to his fellow countryman. 'If thy brother that dwelleth by thee grow poor, and sell himself to thee, thou shalt not compel him to serve as a slave. As a hired servant and as a settler shall he be to thee; he shall serve with thee to the year of jubilee; then shall he be released by thee, he and his children with him, and shall return to his clan, and to the landed possession of his fathers shall he return. For they are my servants whom I brought out of the land of Egypt; they shall not be sold as slaves'.

The regulations of the year of jubilee apply to farm lands and to dwelling houses of unwallled villages. Farm property is redeemable at any time. 'The houses of the villages which have no wall around them shall be reckoned as belonging to the fields of the country; the right of redemption shall be retained for them<sup>3</sup>, and they shall be released at the jubilee'. No

1) Lit., 'flesh of his flesh.' The biblical phrase for relationship is, 'I am your bone and your flesh' (Judg. 9:2; cp. Gen. 2:23; 29:14; 2 S. 5:1; 19:12, 13). In Lev. 25:49 'flesh' is explained by the Hebrew term for clan. Smith, *Rel. Sem.*, 256. 2) *Soc. Leg. Prim. Sem.*, 93. 3) A house that has been dedicated to Yahwe may be redeemed by adding one-fifth to



distinction is drawn between unwalled villages and the open country, owing to the close proximity of farm houses to the adjoining fields. The case is different, however, as regards city property, or real estate in walled cities. 'If a man sell a dwelling house in a walled city, he shall have the right of redemption after it has been sold. If it is not repurchased within a year, the house that is in the walled city shall be assured in perpetuity to its purchaser and to his descendants; it shall not be released in the jubilee year'. An exception is made for the holdings of the Levites in the Levitical cities, which were subject to the rules of village property and not of walled cities. For the houses of the Levites the right of redemption is unlimited. 'If one of the Levites do not<sup>1</sup> redeem it, the house that was sold in the city of their possession shall be released at the jubilee. But fields belonging to the common land of their cities may not be sold; for that is their perpetual possession'.

The provisions of Leviticus 25:8ff. have to do for the most part with the reversion of ancestral holdings to the members of Hebrew clans, which originally possessed them. Closely associated with the legislative enactments regarding landed property is the subject of property in slaves<sup>2</sup>. The law treats of both forms of property under the same head; both shall be subject to redemption. As regards property in land, the right of redemption implies the obligation and duty of preëmption. To purchase the land of a fellow clansman, so that the economic solidarity of the clan may be preserved, is regarded as a sacred duty. By ancient custom this right devolved upon the nearest kinsman and heir presumptive. If for some reason that right was not exercised, the unfortunate Israelite, or his next of kin, could buy back before the jubilee the land which had been sold. The system shows how intense was the feeling of clan solidarity among the

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the valuation placed upon it by the priest. Similarly, the man who desires to retain the usufruct of a piece of consecrated land shall add for the purpose of redemption the fifth part of its assessed value, computed on the basis of a sheqel of silver per annum for each homer of barley sown upon it. Lev. 27:14ff.

1) So Vulgata. 2) Cp. *Soc. Leg. Prim. Sem.*, 85.—112.

ancient Hebrews. The importance of the old conception of clan solidarity in Israel's tribal period cannot be overestimated.

The entire legislation relating to the jubilee is in the spirit of brotherhood. Within the clan all are 'brothers', and thus, in theory at least, on a footing of equality. From the point of view of the primitive clan it would be wrong to exact interest from a poor Israelite. 'If thy brother<sup>1</sup> grow poor, thou shalt relieve him. Take of him no interest or increase, but fear thy God, that thy brother may live with thee'<sup>2</sup>. The members of such a brotherhood are exhorted to leniency toward impoverished Hebrews who had sold themselves for a debt. 'Thou shalt not compel thy brother Israelite to serve as a slave. As a hired servant shall he be to thee'. In the year of jubilee, 'he and his children shall return to his clan, and to the landed possession of his fathers'<sup>3</sup>. However, it is not to be inferred from these passages that the provisions of this law are to be restricted to the Hebrew clan. Indeed, the idea of brotherhood, which was so pronounced among the members of the primitive clan, was at an early date<sup>4</sup> carried over into the Hebrew nation, as is seen from the author's statement in Leviticus 25:46, 'But over your 'brothers', the children of Israel, ye shall not rule, one over another, with harshness'. Moreover, the fallow of the fiftieth year, like the fallow of the sabbatical year, was for the benefit of all concerned; the spontaneous yield of that year belonged to all Israelites in common. In the same spirit of brotherhood it is forbidden to defraud a brother Israelite of his rights in the landed property of the clan group<sup>5</sup>. As has been pointed out, clan property is inalienable. 'The land shall not be sold in perpetuity'; that is to say, 'the land shall not be sold so as to be quite cut off' from the clan to which it belongs. The land of a poor Israelite shall either be redeemed by one of his clansmen, or by the original holder himself, provided 'he find sufficient means to redeem it'.

The right of redemption tended to keep intact the landed property of the clan, and acted as a check upon the right of free sale. The existence of a similar limitation to the absolute

1) 'fellow countryman.' 2) Lev. 25:35-36. 3) vv. 39-41.

4) Am. 3:1, 2; Mic. 2:3; cp. Gen. 12:3; 18:18; 26:4; Ps. 72:17; Acts 3:25; Gal. 3:8. 5) 25:13-17.

ownership in land is proved by the right and duty of purchase within the clan, the nearest kinsman having the preferential right of purchase. In Jeremiah 37:12 the prophet is on the point of going to Anathoth in order to receive his 'allotted portion there among the people'<sup>1</sup>. There is some warrant for supposing that in this particular instance the Hebrew word for 'people' also has the meaning of 'clan', owing to the tenacity of tribal custom, especially among the members of a conservative priesthood. The survival of the ancient *nishpaṭ hagge 'ulla*<sup>2</sup>, in Jeremiah 32:6—15, lends additional weight to this assumption. Jeremiah, as the chief agnate, is morally bound to buy the property of his cousin who is about to sell his field. 'And Hanameel, mine uncle's son, came to me and said, Buy my field, I pray thee, that is in Anathoth in the land of Benjamin; for the right of inheritance is thine, and the right of preëmption is thine. And I bought the field of Hanameel mine uncle's son'.

The distinction drawn in Leviticus 25:29ff. between city and farm property points to a conflict in the Hebrew and Amorite conception of landed property. When the Hebrews settled in Canaan, they soon came into contact with a conception of property diametrically opposed to their own. The records indicate that the Israelites clung tenaciously to the idea that the soil is inalienable; the city Amorites, on the other hand, regarded land as of so much monetary value, to be disposed of at will by the individual owner. The commercialism of the Amorite population, residing in the fortified cities had at an early date reduced land to the category of a speculative object. It is not to be wondered at, therefore, that the idea of personal ownership should be more highly developed in such trading centers than in the rural districts occupied by the invading desert-clans, and hence the differentiation between realty in walled cities and farm property in unwallled villages. This twofold treatment of property in land is the outgrowth of a semi-nomadic environment as contrasted with a more advanced stage of civilization. Anciently, the matter of tenure was vested in the clan as a whole rather than in the individual clansman, the welfare of the latter being merged in that of the group. The territory or district of the

1) Gesenius, *op. cit.*, 212, 544.

2) right of preëmption.

brotherhood is held as a common possession by all the members of the clanship<sup>1</sup>. To the ancient clansman the soil is the common foundation of life, and therefore to be held intact for the good of all concerned. Property in land, from the viewpoint of the desert-clan, is not an item of commerce, subject to barter, sale, and rental, or which may be treated as collateral for mortgage loans. The sharp contrast between Hebrew clan notions of property and the Amorite institution of individual landownership comes to the surface repeatedly in the course of Hebrew history. Thus Araunah, the Jebusite, in keeping with the Amorite point of view, readily consents to the sale of his property in response to David's request. 'And Araunah said, Why has my lord the king come to his servant? And David said, To buy the threshingfloor of thee. I will surely buy it of thee at a price, for I must not offer burnt offerings to Yahwe my God which cost me nothing. So David bought the threshingfloor and the oxen for fifty sheqels of silver'<sup>2</sup>. In 1 Kings 21, on the other hand, Naboth, a member of the Hebrew peasantry, shows a strong disinclination to alienate in perpetuity, either by exchange or sale, the inheritance of his fathers. 'Naboth the Jezreelite had a vineyard beside the palace of Ahab, king of Samaria. And Ahab spake unto Naboth, saying, Give me thy vineyard, that I may have it for a vegetable garden, because it is near my house, and I will give thee a better vineyard for it; or, if it seem preferable to thee, I will give thee the value of it in money. But Naboth said to Ahab, Yahwe forbid, that I should give to thee the inheritance of my fathers'. Landed property inherited from the fathers is not to be treated as an item of sale or exchange. To alienate property, which descended from father to son, would be contrary to the usage of common law. Ahab at first recognizes the peasant's right in refusing to sell his vineyard. Jezebel, however, on learning what had transpired, took matters into her own hands, and conspired against Naboth with the sole object of appropriating the coveted property. The king's Phoenician wife, it will be remembered, had been reared in the wealthy, commercial city of Sidon. In the eyes of Jezebel, who was thoroughly familiar with Amorite customs and legal

1) Wallis, *Sociological Study of the Bible*, 88ff.

2) 2 S. 24:21.

usages, Naboth had refused a most reasonable request on the part of the king. To facilitate the seizure of his land, it was arranged that the unobliging peasant be cited before the elders and nobles of his city on the trumped-up charge of blasphemy. These subservient authorities, unwilling to displease the queen 'did as Jezebel had ordered them. They proclaimed a fast, and put Naboth in a prominent place among the people. And two base men came in and sat before him, and the scoundrels bore witness against him in the presence of the people, saying, Naboth cursed God and the king<sup>1</sup>. Then they carried him out of the city, and stoned him with stones till he died'. Ahab now went down to Naboth's vineyard in order to enjoy the fruits of his judicial murder. For this infringement upon the sacred rights of the Hebrew peasantry, Elijah utters an awful curse upon the unscrupulous king, culminating in the subversion of the house of Ahab. 'Hast thou murdered and robbed? In the place where the dogs licked the blood of Naboth shall they lick up thine also. And the dogs shall eat Jezebel in the field of Jezreel. When Ahab heard these words, he rent his clothes, and put on sack-cloth, and fasted, and went about quietly'. Ahab had been disloyal to the customary law of his Hebrew ancestors, and to the ideals of justice prevailing among the Israelite clans from time immemorial. Outraged public opinion found a vigorous spokesman in Elijah, the Gileadite, who had been reared in the east-Jordan region, where the old Hebrew clan customs still predominated. This incident brings out in clearest relief the fundamental difference between the economic theories of the city Amorites and the Hebrew peasantry. It is true that the Amorites had lost their national identity as a result of the Hebrew conquest. Generally speaking, the conquered race melted slowly into the new social amalgam of the Hebrew nation. Nevertheless the fact remains that the Amorite point of view survived in Hebrew life and history. Two conflicting standpoints confronted each other; the one, shared by Hebrew shepherds, cattlemen, and peasants; the other, by the wealthy urbanites, who had come under the influence of Amorite ideas and ways of life. A long contest was waged between the adherents of the old Hebrew

1) Cp. Ex. 22:28; Lev. 24:14—16, 23; 1 S. 3:13.



clan customs and the city capitalists. The great bulk of the invading Hebrews, who "settled in the highlands of Canaan retained their clan organization for a long time, and were forced to continue upon a very crude economic level. They carried some of their primitive social justice, or *mishpat*, clear through the times of the Judges and the highland kingdom under Saul; while after the establishment of the composite Hebrew monarchy under David, the more backward and remote classes in the nation were still greatly influenced by the ideas and practices of the desert ancestors"<sup>1</sup>. That the Amorites were still a powerful economic factor after the settlement in Canaan, may be gathered from the book of Judges, which contains a list of about twenty unconquered cities, occupying the heart of the land<sup>2</sup>. In the ensuing contest the inhabitants of the Israelite highlands protested in the name of the Deity against the legal usages of the Amorite population in the fortified cities. As has been pointed out, the ancient Hebrews drew no distinction between the religious and the secular; hence the identification of Yahwe with the customary law of the clan brotherhood. Throughout the period of the Judges and of the highland kingdom of Saul, it was the function of the clan courts to administer customary justice in the name of Yahwe, each case being decided in accordance with certain well-known traditional precedents<sup>3</sup>. The total disregard of Israel's consuetudinary law by Samuel's unscrupulous sons created a strong desire for a king who would not be apt to lower the dignity of his office by the perversion of social justice. 'When Samuel was old, he appointed his sons judges over Israel. His sons, however, walked not in his ways, but turned aside after lucre, and took bribes, and perverted justice<sup>4</sup>. Then all the elders of Israel assembled, and came to Samuel at Ramah, and they said unto him, Behold, thou art old, and thy sons walk not in thy ways. Now appoint for us a king to judge us like all the nations'<sup>5</sup>. The aged seer informs the elders that the economic system, or *mishpat*<sup>6</sup>, of a kingdom, modelled after the Canaanite form of monarchical government, will only bring additional hardships, owing to the Amorite tendency toward land concentration

1) Wallis, *op. cit.*, 90. 2) 1:27—35; 4:17; 19:10—12. 3) 3:10; 4:4, 5; 10:3; 12:7, 9, 11, 13, 14; 1 S. 7:15—17. 4) Heb. *mishpat*, from *shapat*, 'to judge.' 5) 1 S. 8:1, 3—5. 6) Cp. 10:25.

in the hands of a small propertied class of officials and courtiers. 'This will be the customary practice<sup>1</sup> of the king: He will take your sons, and place them in his chariots and among his horsemen, that they may run before his chariots; and he will appoint them for himself as captains of thousands and captains of fifties<sup>2</sup>, and some to plough his land<sup>3</sup>, and to reap his harvest, and to make his arms, and the furnishings for his chariots. He will take your daughters to prepare his perfumes, and to be his cooks and bakers. He will take the best of your fields, and your vineyards, and your oliveyards, and give them to his servants. He will take the tithe of your grain fields, and of your vineyards, and give the proceeds to his eunuchs, and to his servants. He will take your male and female slaves, and the best of your cattle<sup>4</sup> and your asses, and utilize them for his own purposes. He will take the tithe of your flocks, but ye yourselves shall be his slaves<sup>5</sup>.' An entirely different view of kingship is found in Deuteronomy 17:14—20, according to which the king is to be a constitutional ruler, and not an Oriental despot, like the kings of the Amorites. 'When thou comest to the land which Yahwe thy God is about to give thee, and shalt possess it, and shalt dwell therein, and shalt say, I will set over me a king like all the nations that are round about me, be sure to set over thee as king him whom Yahwe thy God shall choose; one of thy brothers<sup>6</sup> shalt thou set over thee as king; thou mayest not put a foreigner over thee, who is not thy brother.' He shall not set his heart upon the acquisition of many horses, of numerous wives, or of great riches. 'He shall observe all the words of this law and these statutes, that his heart be not lifted up above his brothers.' Underlying the author's depiction of the Hebrew conception of kingship is the thought of brotherhood; the king is to be a brother among brothers and not a foreign dynast. The Hebrew nation, according to this view, is a group of brothers, who have a right to expect brotherly treatment from the man whom Yahwe shall select for the kingly office. Israel's first king, on

1) *mishpat*, 'right,' or prerogative. 2) 'hundreds,' so Gk. and Lat.

3) Derelict lands, it seems, fell to the crown. Cf. 2 S. 9: 7, 9—12; 1 K. 21:16; 2 K. 8:3—6. 4) So Gk. 5) 8:11—17. 6) 'fellow countryman.'

the whole, exercised his judicial authority by adhering to the recognized clan customs that had grown up through the centuries. The modest requirements of the peasant-king at Gibeah did not call for any special dues or fixed taxes, not to speak of the Amorite practice of conscription and forced labor. However, with the accession of David to the throne of united Israel, the unfortified capital of the highland kingdom of Saul was abandoned, the seat of authority being transferred to one of the Amorite walled cities, that is to say, to the Amorite city of Jerusalem<sup>1</sup>. It is not without significance that one of the first acts of David's reign was to take a census<sup>2</sup> of the people, which was evidently regarded as a sinful innovation, not only by Joab and the tribal representatives, but also by the people at large. Ostensibly, this enumeration of the people had to do with the question of military service and political taxation. Moreover, an official, named Adoniram, is said to have been 'in charge of the forced labor'<sup>3</sup>. It is needless to add that the *corvée* points to an Amorite source. Further, Absalom's great revolt implies that Amorite law was not without its influence upon the judicial activity of the king. Obviously, there is something wrong with the administration of customary justice, or *mishpat*, 'Oh, that someone would make me judge in the land, that to me might come every man that hath any suit, or cause, and I would do him justice!'<sup>4</sup> David, however, aided by his mercenaries<sup>5</sup>, scores a military triumph over the peasantry. Later, Solomon's elevation to the throne was accomplished by the assistance of the professional, hired soldiery under Benaiah<sup>6</sup> to the chagrin of the peasantry, who had espoused the cause of Adonijah<sup>7</sup>. The new king, who had been reared in the Amorite city of Jerusalem and not among the peasantry of the highland villages, naturally adopted the despotic Canaanite theory of government as is shown by the imposition of an exacting system of taxation and forced labor. The division of the land into twelve administrative districts virtually overlooks the old tribal distinctions<sup>8</sup>. The oppressive yoke of compulsory service bore heavily upon

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1) Cp. Ezek. 16:3, 45.    2) 2 S. 24:1 ff.    3) 20:24; cp. 1 Chron. 27:25-34.    4) 2 S. 15:4; cp. 15:1-6.    5) 15:18; 20:23.    6) 1 K. 1:8, 10, 38, 44.    7) 1:5 ff.    8) 4:7 ff.

aliens<sup>1</sup> and Israelites<sup>2</sup> alike. It finally took the form of a revolt leading to the withdrawal of the northern kingdom from the house of David<sup>3</sup>. But in spite of the separation of Israel from Judah the same struggle continued with varying result. In the northern kingdom, as has been pointed out elsewhere<sup>4</sup>, one royal house after another was destroyed in the endeavor to change existing conditions. The case of Naboth, already considered, is the outgrowth of two conflicting standpoints, inherited from the native population residing in the Amorite cities, and from the Israelite side of the nation's ancestry. It brings out in clearest relief the contrast between the Amorite and Hebrew ideals of government. The verdict of the Hebrew historian is that the wickedness of Ahab exceeded all bounds, 'because Jezebel his wife incited him. He did according to all that the Amorites<sup>5</sup> had done<sup>6</sup>.' It was the introduction of Amorite cults and legal practices that led to the bloody revolution of Jehu, ending in the subversion of the house of Ahab. 2 Kings 10: 15—17 relates that Jehu had the support of Jehonadab, the founder of a remarkable sect known as the Rechabites. Seeing Jehonadab, the son of Rechab, coming to meet him, Jehu saluted him and said, 'Come with me, and see my zeal for Yahwe.' Evidently, a reactionary movement, of which the Rechabites were the formal expression, had set in among the followers of Yahwe against the encroachments of Amorite civilization and its concomitant evils<sup>7</sup>. Later, the scene of conflict between the two parties shifted to the capital of the southern kingdom, especially in the days of Athaliah<sup>8</sup> and Manasseh<sup>9</sup>. Concerning the latter we read, 'Because Manasseh, king of Judah, hath done these abominations, and hath done more wickedly than all that the Amorites have done, who were before him, therefore I will stretch over Jerusalem the measuring line, as over Samaria, and plummet, as over the house of Ahab.' Manasseh, the champion of this Amorite reaction against the teachings of Yahwe's prophets is said to have 'shed much innocent blood until he had filled Jerusalem from one end to another.'

1) 9:15, 20—21; cp. Judg. 1:28.    2) 5:13—16 (27—30).    3) 11:26—40; 12:1 ff.    4) See above, chap. II.    5) Cp. Gen. 15:16.    6) 1 K. 21:25, 26.    7) Jer. 35.    8) 2 K. 8:16—27; 11:1 ff.; 2 Chron. 21—23.    9) 2 K. 21:1 ff.; 2 Chron. 33:1 ff.

Before taking up the prophetic attitude toward the *mishpat* struggle, it may be well briefly to discuss the Hebrew conception of brotherhood. The Hebrew term for 'brother,' as previously remarked<sup>1</sup>, has a variety of meanings. It may denote, aside from its restricted usage in the case of one born of the same parents, a kinsman, or more distant blood relation. That there should be strife between uncle and nephew and their respective households is intolerable to Abram, who said unto Lot, 'Let there be no strife, I pray thee, between me and thee, and between my herdsmen and thy herdsmen; for we men are brothers<sup>2</sup>.' When 'Lot, the son of Abram's brother,' fell into the hands of his enemies, the patriarch 'brought back his brother Lot, and his goods, and the women also<sup>3</sup>.' Similarly, 'Jacob told Rachel that he was her father's brother, and that he was Rebekah's son<sup>4</sup>.' And Laban, Rebekah's brother, said unto Jacob, 'Because thou art my brother, tell me, what shall be thy wages? Jacob replied, I will serve thee seven years for Rachel<sup>5</sup>. Further, the same term may also be equated with 'clansman,' the clan group being an association of 'brothers.' In 1 Samuel 20:29 Jonathan replies to his father's inquiry concerning David's absence from the king's court by saying, 'David urgently asked leave of me to run to Bethlehem, for he said, Let me go, I pray, since we have a clan sacrifice in the city, and that was what my clansmen<sup>6</sup> commanded me. Now if I have found favor in thy sight, let me go away, I pray, that I may see my clansmen.' Hebrew 'brother,' moreover, may also be rendered 'fellow tribesman.' After the death of Absalom, David by an appeal to the bond of blood incites Judah not to be behind the other tribes in recalling their king. David commanded Zadok and Abiathar to speak to the elders of Judah, saying, 'Ye are my fellow tribesmen, ye are my bone and my flesh; why then are ye the last to bring back the king?'<sup>7</sup> The word 'brother' occurs in a still broader sense. Not infrequently it is synonymous with 'fellow countryman.' So, in the incident related in 2 Samuel 19:41—42, where the men of Israel remon-

1) See p. 58, n. 3. 2) Gen. 13:8. Cp. 11:27, 31; 12:5. 3) 14:12, 16; cp. v. 14. 4) 29:12. 5) vv. 15, 18. Cp. 27:43; 28:2, 5; 29:14. 6) 'brothers.' See above, p. 36, notes 3, 4. 7) 2 S. 19:12. Cp. Num. 16:10; 18:2, 6; 20:14; Judg. 14:3; Ezra 3:8, 9; Neh. 13:13.



strate with David because of the preferential treatment accorded to his own tribesmen. 'Therefore all the men of Israel came to the king and said, Why have our fellow countrymen, the men of Judah, stolen thee away, when all of David's men are his people? Then all the men of Judah answered the men of Israel, Because the king is near of kin to us.' Exodus 2:11 tells us that 'when Moses had grown to manhood, he went out unto his fellow countrymen<sup>1</sup>, and looked on their burdens.' In Leviticus 19:17—18 we read, 'Thou shalt not hate thy fellow countrymen<sup>2</sup> in thy heart; thou shalt warn thy neighbor, and not incur sin on his account. Thou shalt not take vengeance, nor bear a grudge against the members of thy people; but thou shalt love thy neighbor as thyself.' Turning to the prophets we find that in one of his earliest prophecies Isaiah announces a series of impending judgments upon the northern kingdom. Disaster succeeds disaster only to find a lighthearted and indifferent people. Added to the calamities which have already befallen the nation is the element of civil discord and bloody strife: one Israelite relentlessly pursues the other. 'None shall spare his fellow countryman. Manasseh shall devour Ephraim and Ephraim, Manasseh; and both together shall be against Judah<sup>3</sup>.' According to Micah 7:2, universal wickedness prevails in Israel, 'The pious has perished from the land, and of the upright men there is none; all of them lie in wait to shed blood, each hunts his fellow countryman with a net<sup>4</sup>.' With the advent of Yahwe's chosen representative, 'the rest of his fellow countrymen shall return unto the sons of Israel<sup>5</sup>.' The prophet apparently looks forward to the reunion of Israel and Judah in the Messianic age<sup>6</sup>. Jeremiah in his temple discourse declares that Judah, like Ephraim, shall suffer the loss of its national existence, 'I will do to the house, which ye call by my name, as I have to Shiloh; and I will cast you out of my sight as I have cast out your fellow countrymen<sup>7</sup>, even the entire race of Ephraim<sup>8</sup>.' The members of the exilic community,

1) Cp. 4:18. 2) Cp. Lev. 25:25, 35, 36, 39, 47; Deut. 17:15; 19:18—19; 22:1—4; 23:19, 20; 24:14; 25:3. 3) 9:19, 21. Cp. 19:2; Ezek. 38:21; Hag. 2:22. 4) Cp. Hos. 2:1; 13:15. 5) 5:3: cp. Isa. 41:6; 66:5, 20. 6) Cf. Hos. 3:5; Isa. 11:13—16; Ezek. 16:55, 61; Zech. 13:8. 7) Cp. 29:16; 31:34. 8) 7:14, 15. Cp. Ezek. 24, 23.

although recognizing Ezekiel as a prophet, showed little inclination to accept his message, 'The members of the people talk about thee by the walls, and at the doors of their houses, and speak one to another, every one to his fellow countryman, saying, Come and hear what is the word that cometh forth from Yahwe. They hear thy words, but do them not.' However, the vindication of Ezekiel's predictions concerning his people is not far off, 'And they will know that there was a prophet among them<sup>1</sup>.' Finally, Hebrew 'brother' may even designate one bound to another by a covenant. In 2 Samuel 1:26, for instance, David exclaims, 'I am distressed for thee my brother<sup>2</sup> Jonathan! Thy love to me was wonderful, passing the love of women.' There is a reference in 1 Kings 5:12 to a covenant between Solomon and Hiram, king of Tyre. 'Then Hiram came out from Tyre to see the cities which Solomon had given him, but they were not right in his eyes. And he said, What sort of cities are these which thou hast given me, my brother?'<sup>3</sup> Amos 1:9 assumes the existence of a covenant of brotherhood between Israel and Tyre, as is clear from the charge which is preferred against Israel's covenant-breaking ally, 'Thus saith Yahwe: For three transgressions of Tyre, yea, for four, I will not revoke it; because they have delivered every one of the captives to Edom, and did not remember the covenant of brothers<sup>4</sup>. Therefore I will send a fire on the wall of Tyre, and it shall devour her palaces.' Edom, too, is not without guilt, because of the violation of the bond of brotherhood, 'Thus saith Yahwe: For three transgressions of Edom, yea, for four, I will not revoke it; because he (Edom) pursued his brother (Israel) with the sword. Therefore I will send a fire into Teman, and it shall devour the palaces of Bozrah<sup>5</sup>.

The prophets<sup>6</sup>, as we have seen, regarded the nation as an extension of the ancient clan. Accordingly, the prophetic attitude toward the increasing problems of Hebrew economy is governed

1) 33:30, 32, 33. 2) 1 S. 18:3. 3) 1 K. 9:12, 13. Cp. 20:32, 33, 34.

4) The covenant between Solomon and Hiram, alluded to in 1 K. 5:12, may have contained a provision against selling the Hebrews as slaves. To carry away captive any member of the Hebrew race, no matter how acquired, would constitute a breach of covenant. Compare, also, 2 S. 5:11; 1 K. 5:1 ff.; 16:31. 5) Am. 1:11, 12. 6) Cp. Am. 3:1, 2; Mic. 2:3.

by the ethics of the old clan brotherhood. If the Hebrew nation is to be looked upon as a group of brothers, then every Hebrew debtor ought to be dealt with by the creditor in the spirit of brotherhood, and not in the calculating and grasping spirit of Amorite civilization. The prophets, emphasizing the claims of kinship, deplore the unbrotherly practices of unscrupulous creditors, who take advantage of their brother Israelites for their own profit. 'They hunt their brothers<sup>1</sup> with a net...<sup>2</sup> None will show any pity to his brother...<sup>3</sup> Trust ye not in any brother, for every brother will utterly supplant, and deceive his neighbor'<sup>4</sup>. Theoretically, it was an abomination to reduce the insolvent debtor to the status of a slave<sup>5</sup>. In practice, however, enslavement through insolvency was not an uncommon occurrence, in consequence whereof it became necessary at a comparatively early date to enact a number of poor laws<sup>6</sup> looking to the amelioration of social and economic conditions among the servile classes. For example, the creditor shall remit in the year of release the debt contracted by his impoverished brother Israelite. 'He shall not exact it of his neighbor, or of his brother Israelite. Whatever of thine is with thy brother let thy hand release. Thou shalt not be hardhearted, nor shut thy hand from thy poor brother. Beware lest thine eye be evil against thy poor brother, and thou give him nothing, and he cry unto Yahwe against thee, and thou be guilty of a crime. Thou shalt gladly open thy hand unto thy brother, to thy needy, and to thy poor, in the land. If thy brother, a Hebrew man or a Hebrew woman, be sold unto thee, he shall serve thee six years; in the seventh year, however, thou shalt let him go free'<sup>7</sup>. In Jeremiah 34:8ff., the people of Jerusalem agree 'to proclaim a general liberation, that every man should let his Hebrew slave, whether male or female, go free; that none should enslave a Jew<sup>8</sup>, who is his brother'. But the wealthy urbanites, repenting the loss of their Hebrew slaves, 'brought them again into subjection as male and female slaves.

1) Lit., 'a man his brother,' an expression, which frequently refers to the community as a whole. Cf. Ex. 10:23; 16:15; Lev. 25:46; Num. 14:4; 2 K. 7:6; Jer. 13:14; 25:26; Ezek. 4:17; 24:23; 33:30; 47:14; Hag. 2:22. 2) Mic. 7:2. 3) Isa. 9:19. 4) Jer. 9:4, 5. 5) *Soc. Leg. Prim. Sem.*, 141—142. 6) *Ibid.*, 149ff. 7) Deut. 15:2, 3, 7, 9, 11, 12. 8) 'that none out of Judah should be enslaved' (Gk.).

Therefore the word of Yahwe came to Jeremiah, saying, I made a covenant with your fathers in the day that I brought them forth from the land of Egypt, out of the house of bondage, saying, In the seventh year thou shalt set free thy brother Hebrew, who hath sold himself unto thee; six years shall he serve thee, and then thou shalt let him go free. Ye have not hearkened unto me, in proclaiming freedom, each to his brother, and each to his neighbor: behold, I proclaim to you a freedom to the sword, to the pestilence, and to the famine'. Equally instructive is the passage in Nehemiah 5:1ff. concerning the economic difficulties which confronted the returning exiles. 'And there arose a great cry of the common people and of their wives against their brothers<sup>1</sup>, the Jews. For there were those who were saying, We are pledging our sons and our daughters to secure grain that we may eat and live. Some also there were that said, We must mortgage our fields, vineyards, and houses that we might receive grain because of the dearth. There were also those who were saying, We have borrowed money to pay taxes upon our fields and vineyards. Yet now our flesh is as the flesh of our 'brothers', our children as their children; and lo, we must bring into slavery our sons and our daughters, and some of our daughters have already been enslaved, neither is it in our power to help it, for our fields and vineyards belong to others'<sup>2</sup>. Nehemiah's promptness in dealing with these maladjustments indicates that the governor of the Jewish community was a true successor of the prophets, who seldom refused to come to the assistance of a fellow member of the Hebrew brotherhood. 'Then I was very angry when I heard their complaint, and I reproved the nobles and rulers, and said unto them, Ye exact interest, every one of his brother. And I held a great assembly against them, and said unto them, We ourselves have, according to our ability, redeemed our brothers, the Jews, who had been sold unto the heathen; and will ye yourselves sell your brothers, and shall they sell themselves to us? Should ye not walk in the fear<sup>3</sup> of our God? I, my brothers, and my servants, have loaned them money and grain (and we have remitted this

1) 'fellow countrymen.' 2) 'our fields and vineyards belong to the nobles' (Gk.). 3) 'law,' 'religion.'

interest). Restore to them this very day their fields, their vineyards, their oliveyards, and their houses, also the requirement of the money and of the grain, the wine and the oil, which ye as creditors may require of them. Then they said, We will restore them, and will require nothing of them. And I summoned the priests, and I made them<sup>1</sup> swear that they would do according to this promise. Further, I shook out the fold of my garment<sup>2</sup>, and said, So may God shake out every man, who does not fulfil this promise, from his house and from his property, even thus may he be shaken out and empty. And the whole assembly said, Amen'. In the closing paragraph of the same chapter, Nehemiah observes that in his official capacity as governor he had imposed no exactions upon the people, 'because of the fear of God'. His rule affords a good illustration of the obligations of brotherhood and of blood relationship. The non-fulfilment of the claims of kinship, whether by the individual or the group, will be sure to meet with divine disapproval. Thus Zechariah, by the use of a highly symbolical act, speaks of dissolving 'the brotherhood between Judah and Israel'<sup>3</sup>. The emphasis in Malachi 2:10 is on the fatherhood of God and the consequent brotherhood of man, 'Have we not all one father? Hath not one God created us? Why do we deal treacherously, every man with his brother?' Yahwe demands, as we shall see presently, deeds of justice and mercy and not formal religion. The God of Israel is especially interested in the dependent classes, who are under his protection, 'He establisheth the legal rights (*mishpat*) of the fatherless and the widow and loveth the resident alien'<sup>4</sup>.

The prophets, championing the cause of the more backward social classes of the nation, were intensely interested in the outcome of the *mishpat* struggle. Thus the insurrection led by Jeroboam had the support of the prophet Ahijah, the Shilonite. In the subsequent history of the two kingdoms the prophets of Yahwe frequently protested against the encroachments of Amorite law upon the customs and legal usages of the old clan brotherhood. Amos, for example, laments the perversion of customary

1) i. e., the accused. 2) Cp. Job 38:13; Acts 18:6. 3) 11:14.

The Septuagint reads, 'the brotherhood between Judah and Jerusalem.'

4) Deut. 10:18.



justice in the courts of law, which were under the control of the upper classes. In other words, the ruling classes, in their capacity as custodians of the law courts, favored the legal system of the Amorites to the detriment of the early Hebrew *mishpat* customs. There are those who turn the sweetness of customary justice into the bitterness of civil injustice. 'They hate him that reproveth in the gate (the venality of the judges), and abhor him that speaketh uprightly. Therefore, because ye trample upon the weak, and take from him exactions of grain, ye may build houses of hewn stone, but ye shall not dwell in them, ye may plant vineyards of delight, but ye shall not drink their wine. Ye oppressors of the innocent, takers of bribes! Yea, the needy in the gate they thrust aside. Hate evil and love good, establish justice (*mishpat*) in the gate; perhaps Yahwe will then be gracious to a remnant of Joseph' <sup>1</sup>. Hosea speaks of customary justice (*mishpat*) as springing forth like poisonous weeds in the furrows of the field <sup>2</sup>. The administrators of justice are ripe for judgment, since they have become a snare to Israel. 'Hear this, O priests, and hearken, O house of Israel, and, O house of the king, give heed; since for you is the judgment (*mishpat*). Ephraim practices oppression and crushes justice (*mishpat*). The princes of Judah are like landmark removers; upon them I will pour out my wrath like water' <sup>3</sup>. Micah charges the guardians of justice with the sordid betrayal of their sacred trust. 'Hear now, ye heads of Jacob, and judges of the house of Israel; ye that hate the good and love the evil; ye that abhor justice (*mishpat*) and judge for a bribe, Is it not your duty to execute <sup>4</sup> justice (*mishpat*)? It hath been shown thee, O man, what is good. Yea, what doth Yahwe require of thee, but to do justice (*mishpat*) and to love mercy, and to walk humbly with thy God? Woe to those who devise mischief upon their beds, which in the light of morning they accomplish as soon as it is in their power so to do. They covet fields and seize them, houses and they take them. So they crush a yeoman and his household, a man and his heritage' <sup>5</sup>. Customary law is opposed to the

1) Am. 5:7, 10, 11, 12, 15.    2) 10:4.    3) 5:1, 11, 10.    4) Lit., 'to know,' that is, to have a practical knowledge of the essentials of a sympathetic and righteous administration of customary justice.    5) 3:1, 2, 9, 11; 6:8; 2:1, 2.

ejection of such peasant-farmers from their ancestral holdings. The ruling classes, actuated by mercenary motives, sought to enrich themselves at the expense of the Hebrew peasantry. To accomplish this end, recourse was had to the business methods of Amorite civilization, chief among these being the exaction of an exorbitant rate of interest, the foreclosure of mortgages, and enslavement through insolvency. But the heartless absorption of peasant holdings will eventually lead to the dispossession of the plotting grandees themselves. Their lands shall be surveyed by a foreign conqueror and allotted to others<sup>1</sup>. The same land-grabbing tendency appears in Isaiah's parable of the vineyard, addressed principally to the wealthy property owners constituting the upper stratum of society. Yahwe, the owner of the vineyard, 'expected justice (*mishpat*), but, behold! bloodshed; for righteousness, but, behold! an outcry. Woe unto them that join house to house, that join field to field, till there is no more room left, and ye dwell alone within the land. Of a truth many houses shall be desolate, spacious ones and fair shall be uninhabited. For ten yokes<sup>2</sup> of vineyard shall yield one bath<sup>3</sup> and the seed of a homer<sup>4</sup> shall yield an ephah<sup>5</sup> and lambs shall graze upon the ruined places of Jerusalem as upon a pasture'<sup>6</sup> Yahwe himself 'will enter into judgment (*mishpat*) with the elders and princes of his people: Ye yourselves have depastured the vineyard! What ye have plundered from the poor is in your houses. What mean ye that ye crush my people, and grind the faces of the poor?'<sup>7</sup> The administrators of justice take bribes and wrong the poorer litigants. 'Woe unto them that set up iniquitous decrees, and to the scribes that devote themselves to writing oppression, to turn aside the dependent from securing justice, to despoil the afflicted of my people of their legal rights (*mishpat*), that widows may be their prey, and that they may rob the fatherless. What, then, will ye do in the day of visitation, and in the desolation that cometh from afar? To whom will ye flee for help, and where will ye leave your

1) 2:4-5. 2) A yoke, or 'acre,' represented as much land as a yoke of oxen could plough in a day. 3) A liquid measure containing 36.44 liters, or 77 pints. 4) A dry measure equivalent to ten baths, or ten ephahs. Ezek. 45:11. Cf. Benzinger, *Heb. Arch.* (1907), 192-194. 5) The tenth part of a homer. 6) 5:7-10, 17. 7) 3:14, 15,

wealth?'<sup>1</sup> Ancient customs which have been handed down from time immemorial must be carefully sought out in the interests of equity and justice, particularly in behalf of those most in need of legal protection. 'Cease to do evil; learn to do good; seek out old established custom (*mishpat*); restrain the oppressors; do justice to the orphan; plead for the widow. If ye be willing and obey, ye shall eat the good of the land, but if ye refuse and resist, ye shall be eaten by the sword: for the mouth of Yahwe hath spoken it'.<sup>2</sup> Jeremiah complains, 'Among my people are found wicked men. They set snares, they catch men. As a cage is full of birds, so are their houses full of riches gained by deceit; therefore they have become great and rich. They do not administer justice; the cause of the fatherless, and the legal rights (*mishpat*) of the needy<sup>3</sup> they do not defend'<sup>4</sup>. In all the streets and open spaces of Jerusalem there is not a man who does what is right (*mishpat*)<sup>5</sup>. High and low alike have suffered the old Hebrew *mishpat* customs to become obscured under the influence of commercial civilization, traceable to the Amorite side of the nation's ancestry. 'Then I thought, Surely these belong to the common people; hence they are so ignorant, for they know not the way of Yahwe, and the law (*mishpat*) of their God'. I will now go to the nobles and speak to them, for they know the way of Yahwe and the law (*mishpat*) of their God. But these have altogether broken the yoke<sup>7</sup>, and burst the bonds<sup>8</sup>. Yahwe as the patron of the *mishpat* customs of the old clan brotherhood, delighteth not in the boastfulness of the mighty and of the rich. Rather 'let him that glorieth glory in this, that he is pious and knoweth that I, Yahwe, exercise mercy, justice (*mishpat*) and righteousness upon earth, for in these things I delight, saith Yahwe'<sup>9</sup>. The perversion of Hebrew common law in high places must cease, 'Hear the word of Yahwe, O king of Judah, that sittest upon the throne of David, thou, and thy servants<sup>10</sup>, and thy people that enter in by these gates! Thus saith Yahwe, Execute justice (*mishpat*) and righteousness, and deliver the one who is deprived of his legal rights from the

1) 10:1—3. Cp. 1:27; 32:1ff.; 33:5; 42:1—4.

2) 1:16, 17, 19, 20.

3) 'widow;' so Gk. 4) 5:26—28. 5) 5:1.

6) 'But my people know not the religion (*mishpat*) of Yahwe.' 8:7. 7) Cp. 2:20.

8) 5:4—5. 9) 9:24 (23). 10) 'thy house' (Gk.).

hand of his oppressor, and do no wrong nor violence to the resident alien, the orphan and the widow, neither shed innocent blood in this place. If ye will not hear these words, this house shall become a desolation' <sup>1</sup>. The administration of customary justice is essential to the continuance of Yahwe's favor. 'If ye really amend your ways and your deeds, if ye faithfully execute justice (*mishpat*) between a man and his neighbor, if ye oppress not the resident alien, the orphan, and the widow, and shed not innocent blood in this place, neither walk after other gods to your hurt; then I will cause you to dwell in this place, in the land that I gave to your fathers forever and ever' <sup>2</sup>. According to Ezekiel, the doing of *mishpat* is an indispensable prerequisite in the make-up of a righteous man, civil law being an integral part of religion. 'If a man be righteous, and practice justice (*mishpat*) and righteousness, and oppress no one, restore to the debtor his pledge, commit no pillage, give his bread to the hungry, and clothe the naked, lend not at interest, nor take any increase, withdraw his hand from iniquity, render an impartial decision (*mishpat*) between man and man, follow my statutes and obey my laws (*mishpatim*)' <sup>3</sup>, he shall surely live, saith Yahwe' <sup>4</sup>. The prophet of the exile compares the ruling classes of the nation with greedy shepherds, who prey upon the flock. 'Woe to the shepherds of Israel, who only fed themselves! Should not shepherds feed the flock? Behold, I am against the shepherds. I will rescue my sheep from their mouths. I will feed them with *mishpat*' <sup>5</sup>. I will administer justice between sheep and sheep' <sup>6</sup>. The princes of the future must 'put away violence and oppression, and practice justice (*mishpat*) and equity. Take away from my people your unjust ejectments' <sup>7</sup>, saith Yahwe' <sup>8</sup>. Furthermore, the rules of common honesty shall obtain in the use of weights and measures <sup>9</sup>. Yahwe desires not formal worship but

1) 22:2, 3, 5. Cp. 21:12. 2) 7:5-7. 3) Jeremiah, speaking of the impending doom of the inhabitants of Judah, says, 'I will pronounce judgments (*mishpatim*) upon them because of all their wickedness.' 1:16. Cp. 4:12; 12:1; 39:5; 52:9; 2 K. 25:6. 4) 18:5, 7-9. Cp. 18:17, 19, 21, 27; 33:14-20. 5) Yahwe, the good shepherd, will tend his sheep in accordance with the customs and legal usages of better days. 6) 34:2, 10, 16, 22. 7) Cp. 1 K. 21:1 ff.; Isa. 3:12 ff.; Jer. 22:13 ff.; Ezek. 46:18. 8) 45:9. 9) 45:10-12.

deeds of justice and of mercy. 'Render true decisions (*mishpat*), and show kindness and pity, every man to his brother; and do not oppress the widow, nor the fatherless, the resident alien, nor the poor; and let none of you devise evil against his brother. But they refused to heed the words which Yahwe of hosts hath sent by his spirit through the former prophets' <sup>1</sup>. Malachi, the last of the literary prophets, testifies to the long-continued prevalence of social injustice despite the old prophetic demand for righteousness between man and man. 'I will draw near you for judgment (*mishpat*); and I will be a swift witness against those who oppress the hireling, the widow, and the fatherless, who abuse the resident alien, and fear not me, saith Yahwe of hosts' <sup>2</sup>. The above citations abundantly prove that Hebrew *mishpat*, although possessing a variety of meanings, concerns itself very largely with the social and economic arrangements of early Israel, the question of property in land being quite prominent. In a word, the Hebrew equivalent for what really amounts to primitive social justice, customary justice, old established custom, legal rights or usages, economic system, civil law, decisions rendered in accordance with consuetudinary law, judgment in the sense of punishment for the perversion of Hebrew common law, etc., points to the counteracting influence of Amorite law upon the consuetudinary law of Israel's tribal period, leading to numerous violations and infractions of the customs and usages of the ancient clan brotherhood, particularly with respect to landed property. The prophets were opposed to every form of land concentration, whereby the ancient clanships and households might be ejected from their ancestral holdings. The appropriation of such lands betrayed a lack of fraternal feeling. This in a measure explains the prophetic attitude toward the ruling classes and rich landowners, for with the establishment of a landed aristocracy under the monarchy had come the breaking of the bonds of brotherhood.

Reverting to the jubilee, we are warranted in saying that the question of landed property assumes even greater importance in the land laws of Leviticus 25:8ff. The provision in the law of jubilee regarding realty in unwallled villages and fortified

1) Zech. 7:9, 10, 11, 12.

2) 3:5.



cities, points in the direction of a dual conception of landed property. Sufficient has perhaps been said with respect to Hebrew and Amorite conceptions of property. The lawgiver, it will be recalled, draws a sharp distinction between village and city property. The enactment in Leviticus 25:39—41 is really a compromise measure, drawn up for the purpose of bridging the gap between the communism, or group ownership, of the old Hebrew clan brotherhoods and the institution of private landownership, which was part and parcel of the economic system of the Amorites long before the Hebrews settled in Canaan. With the settlement in Canaan the contrast between the two systems became all the more pronounced, owing to the inroads of Amorite civilization upon the simple rural arrangements of the Hebrew clanship. The jubilee now sets in with its protective measures in order to keep intact the economic system of the Hebrew peasantry without unduly trenching upon the rights of the commercial classes residing in the fortified cities, where the conception of individual ownership would be more fully developed than in the rural districts.

The simplicity of Hebrew economy, as reflected in the law of jubilee, presents another contrast to the growing complexity of Amorite commercialism and civilization. Indeed, the simple life is an essential feature of the year of jubilee, during which the land is to lie fallow, as in the sabbatical year. Agricultural pursuits, such as sowing and systematic ingathering, are to be held in abeyance. In the year of jubilee 'ye shall not sow, neither reap that which groweth of itself, nor gather the grapes of the undressed vine. Ye shall eat the produce thereof directly from the field'<sup>1</sup>. Reliance upon Yahwe's bounty in the sixth year, supplemented by the spontaneous yield of the soil during the period of fallow, will suffice to meet the simple requirements of the Hebrew peasantry. 'Ye shall keep my ordinances (*mish-paṭim*)<sup>2</sup>, and do them; then ye shall dwell in the land securely, and the land shall yield its fruit, and ye shall eat your fill. And if ye say, What shall we eat in the seventh year? behold, we may not sow, nor gather in our produce; then I will command my blessing upon you in the sixth year, and it shall bring

1) Lev. 25:11, 12.

2) 'customs.' See also 18:3 ff.; 19:37; 26:22—24.

forth produce for three years. And ye shall sow the eighth year, but eat yet of the old stores until the produce of the ninth year come in<sup>1</sup>. Under the provisions of this law the harvest of the sixth year, plus the natural products of the soil, must suffice for the sixth, seventh, and eighth years, thus affording ample opportunity for the development of simple habits of living within the limits of early Hebrew economy. Such a law would be a periodic reminder of the simple life of Israel's seminomadic past. As a matter of fact it came to be regarded by the more conservative elements of Hebrew society as the ideal of Israel's social economy. There were those who felt, particularly the lower classes, not to speak of the ascetic note in prophetic literature<sup>2</sup>, that the luxuries and comforts of Amorite civilization were purchased at too great a cost. The most classical and dramatic illustration of this reactionary movement is found in the wandering Rechabites, who advocated a return to the simple manners of the desert in contrast to the luxurious habits of agricultural and commercial life. Jeremiah 35:1ff. records that Jonadab, the son of Rechab, had enjoined upon his clansmen not to plant or own a vineyard, but to abstain from the use of all grape-products. Furthermore, they agreed not to engage in agriculture, but to subsist on the meat and milk products of pastoral economy; not to build permanent houses, but to dwell in tents. They were the exponents of the simple life, retaining the customs and traditions of far nobler times, when men lived in tents and were unacquainted with the allurements of a corrupt civilization. With the approach of Nebuchadnezzar and his army, these wanderers were obliged to seek refuge in Jerusalem. While the siege was still in progress, Jeremiah seized upon their presence in the city to impress upon his countrymen the lesson of obedience to the voice of Yahwe's spokesman. The divine command is, 'Go to the Rechabites<sup>3</sup>, and bring them into the temple<sup>4</sup>, into one of the chambers, and give them wine to drink. And I set before the sons of the house of the Rechabites bowls of wine and cups and said unto them, Drink

1) 25:18—22. 2) Cp. Am. 5:25; 6:1ff.; Hos. 8:4; 11:1, 2; 12:8, 9; 13:11; Isa. 1:13—15; 3:16ff.; Mic. 5:10ff.; Jer. 3; Mk. 1:1—8. 3) Lit., 'house of the Rechabites.' 4) 'house of Yahwe.'

wine. But they answered, We will drink no wine. For Jonadab, our forefather<sup>1</sup>, commanded us, Ye shall never drink wine, neither ye nor your sons; neither shall ye build a house, nor sow seed; neither shall ye plant nor possess a vineyard; but all your days ye shall dwell in tents<sup>2</sup>, that ye may live long in the land wherein ye sojourn as aliens. Thus we have obeyed the voice of Jonadab, the son of Rechab, our forefather, in all that he hath commanded us, to drink no wine all our days; we, our wives, our sons, nor our daughters; nor to build houses for us to dwell in; neither have we vineyard, nor field, nor seed; but we have dwelt in tents, and have obeyed, and done according to all that Jonadab, our forefather, commanded us<sup>3</sup>. Obviously, the reason for Jonadab's injunction was opposition to the institution of private landownership. The Rechabites "would do nothing which implied ownership in the soil. They planted no seed, because the sowing of seed would make it necessary to possess fields; and they drank no wine, because the raising of grapes would make it necessary to own vineyards. Perhaps it was the seizure of Naboth's vineyard by Ahab<sup>4</sup> that suggested their avoidance of landed property. They may have reasoned that the private holding of land was at the root of all evil. By this token, if you have no land, the kings and nobles can take no land away from you. So the Rechabites lived in tents, and followed a semi-nomadic life in the open country, away from contact with city life"<sup>5</sup>. 1 Chronicles 2:55 traces them back to the Kenites<sup>6</sup> of the Arabian desert, with whom the Israelites made a covenant before proceeding to the land of promise. They belonged to the strict Yahwe party, adhering to Israel's earlier faith, when the old brotherhood customs held full sway among the clans of the desert.

In the light of the above considerations we conclude that the jubilee goes back to very ancient times, and presupposes

1) 'father.' 2) Hosea writes, 'I will again make thee to dwell in tents.' 12:9. Cp. 1 K. 12:16ff. 3) The Nabateans, according to Diodorus, had a law forbidding them to 'sow seed, to plant fruitbearing plants, to drink wine, or to furnish a house.' Cited by Kautzsch in his *Übersetzung d. A. T.*, vol. I, p. 767, note c. 4) Cf. 1 K. 21:1ff.; 2 K. 10:11—17. 5) Wallis, *op. cit.*, 181. 6) Num. 24:21; Judg. 1:16; 4:11 (Num. 10:29), 17; 5:24; 1 S. 15:6; 27:10; 30:29; Neh. 3:14.

a tribal background. A slight argument in favor of the antiquity of the jubilee might be derived from the employment of the ram's horn<sup>1</sup>, which represents a survival of primitive usage. Still more to the point is the ancient right of preëemption and redemption, already discussed. In default the alienated property automatically reverted at the jubilee, free of all encumbrance, to the representatives of the original holder. Such a redistribution of all realty, which had been temporarily disposed of, tended to the reëstablishment of the original arrangement regarding assignments of land to the various tribes, clanships, and households. The jubilee is a good specimen of clan law dating from Israel's tribal period. To say that it is a mere paper law, originating in post-exilic times, overlooks the fact that the author of Leviticus 25:8ff has a very definite law in his mind. True, we look in vain for any reference to it in the prophetic literature of pre-exilic times. But the argument from silence is no conclusive proof of the nonexistence of the law of jubilee. In point of fact many of the laws of Yahwe were more honored in the breach than in the observance. Speaking of Ephraim, the representative of the northern kingdom, Hosea says, 'Were I to write down for him my laws by myriads, as those of a stranger would they be regarded<sup>2</sup>. Allusion is made in Ezekiel 46:16—18 to the reversion of crown lands in the year of liberty. The prince may bestow in perpetuity to one or more of his sons any portion of his landed property, since 'it is their possession by inheritance. But if he make a gift out of his inheritance to one of his servants, it shall be his till the year of liberty, and shall then revert to the prince; but as for his inheritance it shall belong to his sons. Moreover, the prince shall not take of the people's inheritance so as to deprive them by force of their possession; he shall give an inheritance to his sons out of his own possession, that none of my people be scattered from his possession'. The reversion of crown lands to the original occupier is in harmony with the stipulation in Leviticus 25:10 relating to the restitution of landed property in the jubilee, the prince being subject to property laws like any other citizen. This custom, if it did not already exist at a much earlier date,

1) *qeren hayyobel*,

2) S:12. Cp. Jer. 34:8—18.

could hardly have originated during the exile. From what we know of Babylonian literature, contemporaneous with the events of the exile, individual proprietorship is an established principle in Babylonian business transactions, land being regarded as a lawful item of commerce. To suppose that the fiftieth year is merely an artificial expansion of the sabbatical idea, and that some priestly writer, or writers, invented the law of the jubilee, is a purely hypothetical conjecture. The jubilee is no mere paper law, otherwise the passage in Ezekiel 46:16—18 remains unintelligible. The allusive way, in which the prophet refers to the institution, suggests that an elaborate description of the jubilee was deemed unnecessary, since every intelligent Israelite would know at once the practical bearing of such a reference<sup>1</sup>. The jubilee, even at this late date, was still a well-known institution, notwithstanding the inroads of the Hebrew monarchy upon the old proprietary rights of the 'liberty-loving clans and tribes, composing the nation. That the institution outlived the regal period, and that it possessed enough vitality to persist in the face of a strong individualizing tendency<sup>2</sup>, resulting in private landownership and the concentration of landed property in the hands of a few, is an evidence of the tenacity of the old tribal system. With the removal of the restraints coincident with the regal period, the old clan customs were revived. And remembering the importance of the Pentateuch in both exilic and post-exilic times, we can readily understand why Ezekiel, for instance, should refrain from restating the land laws of Leviticus 25:8ff, especially when every pious Israelite was already familiar with these and other pentateuchal laws. For a similar reason we do not wholly wonder at the communism of the primitive church<sup>3</sup>.

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1) Cp. Isa. 61:1; Jer. 34:8, 15, 17. 2) On the rise of individualism among the Hebrews, see Smith, J. M. P., *op. cit.*, 174ff. 3) Acts 2:42, 44—47; 4:32—37. The Essenes, too, were communistic as to property, taking 'mine is thine, and thine is mine' as a formula for the regulation of their social and economic life. Concerning these contemporaries of Jesus, Philo of Alexandria says: 'No one had his private house, but shared his dwelling with all; and, living as they did in colonies, they threw open their doors to any of their sect who came their way. They had a store-house, common expenditure, common garments, common meals. This was made possible by their practice of putting whatever



The members of the Christian Church were not to lose sight of their brothers in the faith<sup>1</sup>, owing to the intimate connection between religion and matters of common life.

The principle of apportionment, referred to in Numbers 26:53—56, had regard to the numerical strength of each agnatic group. It is true that the tribe and the clan are the only groups expressly mentioned. Nevertheless we may be quite certain that the same principle held good with respect to the primal unit of society, the land being apportioned by tribes and clans and then to households within the clan<sup>2</sup>. The household being an integral part of the larger social unit, would doubtless receive a proportionate share of the clan's property.

That the household was a social and economic unity may be inferred from the levirate which has all the appearance of an ancient tribal institution. The passage in Deuteronomy 25:5—10, however, restricts the custom to brothers dwelling together on the same paternal estate. 'If brothers dwell together<sup>3</sup>, and one of them die without male issue, the wife of the deceased shall not marry a man outside the clan<sup>4</sup>; her husband's brother shall go in unto her, and make her his wife, and perform unto her the duty of levirate marriage. The first son<sup>5</sup> whom she beareth shall succeed to the name of his deceased brother, so that his name may not become extinct in Israel. But if the man have no desire to marry his sister-in-law, then his sister-in-law shall go up to the elders at the gate<sup>6</sup>, and say, My brother-in-law refuseth to perpetuate his brother's name in Israel; he will not perform unto me the duty of levirate marriage. Then the elders of his city shall call him, and speak unto him; and if he insist, and say, I have no desire to take her,

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they each earned day by day into a common fund, out of which also the sick were supported when they could not work. They are very industrious, and work hard from early sunrise to sunset as tillers of the soil, or herdsmen, or bee-farmers, or as craftsmen.' *Quod om. prob. lib.* 12—13; *Apology for the Jews*.

1) John 13:34, 35; 1 John 3:10—17, 23; 4:10—11; Rom. 12:1ff.; 15:26—27; 1 Cor. 10:16—18; 2 Cor. 8—9; Phil. 2:1ff.; Philem. 5—20; Heb. 13:1, 16. 2) Cp. Num. 36:6—9. 3) 'in the same locality,' so Steuernagel, *ad loc.* 4) Gesenius, *H. W. B.* (1905), 194. 5) Cp. Deut. 21:15. 6) city gate.

then his sister-in-law shall draw nigh unto him in the presence of the elders, and loose his sandal from off his foot, and spit in his face; and she shall speak forth and say, So shall it be done unto the man that doth not build up his brother's house. And his name shall be called in Israel, The house of him that hath his sandal loosed. The primary object of the levirate was the perpetuation of the name and household of the deceased. It was a collateral object of the institution to prevent the disintegration of the decedent's property, the son and heir succeeding to the name and inheritance of the deceased brother<sup>1</sup>. Pointing in this direction is the removal of the man's sandal by the contemned sister-in-law in token of his renunciation of the levir's rights and privileges, including the right of inheritance to the property of his elder brother. From a bit of archaeological information in Ruth 4:7 we learn that to relinquish a given right, or to effect a transfer of property, the seller would take off his sandal and give it to the buyer as a symbolic attestation of the act of relinquishment, or transfer, and thus the transaction acquired legal validity.

The landed possessions of the household must be kept intact as a matter of duty toward one's ancestors<sup>2</sup>. Property inherited from the fathers is not to be alienated in perpetuity. The violation of this rule always evoked deep-seated resentment. Elijah predicts the destruction of the house of Ahab by way of requital for the wrongs inflicted upon Naboth and his sons. In due course Joram, the king of Israel, is despatched by the hand of Jehu near the field of Naboth, the Jezreelite. 'Then Jehu said to his captain, Take him up and cast him in the field of Naboth, the Jezreelite; for remember, how that, when I and thou rode together after Ahab, his father, Yahwe made this pronouncement concerning him, Verily I saw yesterday the blood of Naboth, and the blood of his sons, and I will requite thee in this plot, saith Yahwe'<sup>3</sup>. Micah, full of moral indignation and

1) In Ruth 4:10 Boaz marries the childless widow of Mahlon, the son of Elimelech, with a view 'to perpetuate the name of the deceased upon his inheritance, so that the name of the deceased may not become extinct among his brothers.' Cp. 4:5, 11. 2) 1 K. 21. 3) 2 K. 9: 25, 26. The household, apparently, has a solidarity in matters of inheritance, as may be gathered from the fact that in order to confiscate the

prophetic zeal, exclaims, 'They covet fields and seize them, houses and they take them. So they crush a yeoman and his household, a man and his heritage<sup>1</sup>.

## Chapter VI

### The Hebrew Village Community

The law of the jubilee, then, was enacted in the interests of the Hebrew clan, or village community. In the nomadic or seminomadic stage, there is no absolutely fixed hold on land, owing to the shifting and precarious character of tribal possessions. Ordinarily, however, the land of a given group, within the assigned limits, is held as a common possession by all the members of that group. Under no circumstances can any portion of such land be alienated or transferred to a member of another group. The landed possessions of each group must be kept intact. The settlement in Canaan did not necessitate the immediate abandonment of tribal ideas of ownership. What actually happened was that the point of emphasis was shifted from the tribe to the clan and its component elements which had taken up their abode in the agricultural villages of the dispossessed Canaanites. The invading clans settled at first in the highland villages, where they gradually became metamorphosed into local communities<sup>2</sup>, which were held together by a community of

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vineyard Ahab deemed it necessary to include the sons of Naboth in the fate of their father.

1) 2:2. Cp. Isa. 5:8. 2) Clan-names and place-names are not infrequently identical, as is plain from such a phrase as 'Ophrah of the Abiezrites' (Judg. 6:24; 8:32. Cp. Num. 26:30—33; 27:1; 36:11; Josh. 17:3. Cf. Gray, Num., pp. 391—392. See also *Journal of Philology*, IX, p. 92). According to Josh. 17:2 Abiezer was a clan of Manasseh. From 1 S. 20:6, 29 we learn that Bethlehem was the seat of an annual clan sacrifice (Smith, W. R., *Rel. Sem.*, 232, 258). Whether or not Bethlehem was inhabited exclusively by the members of David's clan we are unable to ascertain (cp. Judg. 18:11—29; 2 S. 15:2). Bethlehem Ephrathah, according to Mic. 5:1, seems to be the seat of the Davidic clan. Of course, the inhabitants of a given place might be composed of more than one clan (Judg. 9:1 ff.).

interests. Clan notions of property were retained and carried over into the settled, agricultural life of Palestine. In regard to land tenure the theory is that the individual occupier is a tenant of the supreme, ultimate owner of the soil. 'The land shall not be sold so as to be quite cut off' from the clan to which it belongs. 'The land is mine, and ye are resident aliens and settlers with me'<sup>1</sup>. The conquest and occupation of the land had been effected in the name of Yahwe. The land of Israel's God cannot be sold in perpetuity; it is inalienable. At most the individual holder, who merely becomes a lessee for all or part of forty-nine years, could only sell the use of the land until the next jubilee. Meanwhile no land could be disposed of without the right of repurchase by the original holder. The permanent alienation of ancestral holdings was carefully guarded against by the reversion in the jubilee. 'Every one shall return to his landed possession and to his clan'<sup>2</sup>. This applied not to city property but to houses and farms in unwalled villages. Jubilee-restitution, however, also involved a *restitutio in integrum* for all property in slaves. Thus poverty-stricken peasants, who had sold themselves for a debt, might be redeemed at any time. It was stipulated that in default of redemption the creditor shall not compel his 'brother Israelite to serve as a slave. As a hired servant and as a settler shall he be to thee'. Only foreigners shall be subject to slavery, 'Of them and of their clans ye shall buy slaves; but over your 'brothers', the children of Israel, ye shall not rule, one over another, with harshness. For they are my servants, whom I brought from the land of Egypt: they shall not be sold as slaves'<sup>3</sup>. With the expiration of the maximum limit of service, the insolvent peasant 'and his children shall return to his clan, and to the landed possessions of his fathers'<sup>4</sup>. In other words, both land and people belong to the God of Israel, and all Israelites are 'brothers', constituting within the bounds of each village a community of kinsmen.

The Hebrews wrested from those conquered many towns and villages, houses and farm lands. During the stay in Kadesh

1) Lev. 25:23. The land of Yahwe and the house of Yahwe are alternative Old Testament terms denoting the proprietary relation of Israel's God to the land of Canaan. Hos. 8:1; 9:3, 15; Jer. 12:7ff.; Zech. 9:8.

2) Lev. 25:10. 3) 25:39, 40, 45, 46, 42. 4) v. 41.

spies are sent out to search the land<sup>1</sup>, and see 'whether the people dwell in unprotected camps, or in fortified places'. It is related that the dwelling-places of these people, situated almost invariably either on an isolated hillock rising up out of the plain or else on the projecting spur at the end of a chain of hills, presented a formidable aspect, for they were strongly fortified and wellnigh impregnable. But Yahwe, the God of Israel, fought for his people, and Israel appropriated the Amorite towns east of the Jordan, together with their circumjacent unwall'd villages and fields. 'And Israel dwelt in all the towns of the Amorites, in Heshbon and all the villages<sup>2</sup> belonging thereto, in Jaazer and the villages belonging thereto'<sup>3</sup>. Figuratively speaking, the relation of Heshbon and Jaazer to their respective dependencies is like that of a mother to her daughters; and hence the picturesque expression, 'the town and its daughters'<sup>4</sup>. When the Israelites entered Canaan, the whole country was occupied by small communities, or independent city-states, resembling a mass of little clans, each ruled over by its own *melek*<sup>5</sup>. The dispossessed Canaanites withdrew to their strongholds, leaving their abandoned towns and dependent hamlets in the hands of the invaders. These were assigned in what may be called the Domesday book<sup>6</sup> of Canaan to the tribes of Israel according to their clans. Thus we read, 'This is the inheritance of the Reubenites and Gadites according to their clans, the towns and their villages'<sup>7</sup>. The clans of Eastern Manasseh took the 'tent-villages'<sup>8</sup> of the Amorites in Gilead, which doubtless grew out of the early settlements of a pastoral community<sup>9</sup>. Equally humble were the beginnings of the villages<sup>10</sup>, appertaining to towns, which were assigned in the book of Joshua to the clans

1) Num. 13:1 ff. 2) Lit., 'its daughters.' 3) Num. 21:25, 32; Judg. 11:26 (Moore, *ad loc.*); cp. 11:21—24. 4) Num. 32:42; Josh. 15:45, 47; 17:11; Judg. 1:27; 1 Chron. 18:1; Neh. 11:25, 27, 28, 30, 31. Cp. 2 S. 20:19. 5) Macalister, *Civilization in Palestine*, p. 48. 6) Josh. 13—21. 7) 13:23, 28. 8) *havvot*. The towns of Jair of a later day may have been more than mere tent-villages. It is quite improbable that the name was discarded after the tents had given place to more permanent forms of architecture. 9) Num. 32:41; Deut. 3:14; Josh. 13:20; Judg. 10:4; 1 K. 4:13; 1 Chron. 2:23. 10) *haserim*. Seemingly, these enclosures for cattle, situated in close proximity to the dwellings of herdsmen, eventually grew into villages. Cf. Gen. 25:16; Isa. 42:11.



of Judah, Ephraim, Benjamin, Simeon, Zebulun, Issachar, Asher, Naphtali, and Dan<sup>1</sup>. The unwalled villages<sup>2</sup>, according to Joshua 19:8, 'lay around the fortified towns'<sup>3</sup> to which they were attached. All things being equal, they were as rapidly as possible enclosed within walls, and thus became fortified centers, affording protection to other villages in the immediate vicinity. The Hebrew equivalent for town<sup>4</sup> is a comprehensive term, ranging in meaning from a nomadic or semi-nomadic settlement to a fortified city<sup>5</sup>. The town is simply an enlarged village with a walled enclosure<sup>6</sup>. However, there is no direct evidence to prove that this protective relation in pre-Israelitish times between town and village inevitably led to the loss of the latter's identity, when the Hebrews entered upon the occupation of Canaan. True, Canaan supplied the towns and villages, houses and farm lands, 'I gave you a land for which ye had not labored, and cities which ye had not built — ye settled in them — and houses and cisterns; of vineyards and olive-trees which ye had not planted do ye eat'<sup>7</sup>. But the invaders supplied the national organization, retaining for a long time their clan organization and inherited customs. The tribal possessions, as we have seen, were apportioned by lot to the clans and their component elements. Naturally, the clan and its constituent households located in the same district, and the clans of a given tribe would occupy contiguous tracts of land as a necessary consequence of their organization. In other words, each kindred group settled in an area by itself, and the several groups in such a way as to bring those most nearly related into geographical connection with each other. For many generations the old tribal organization persisted despite the disintegrating influences of Amorite civilization. The book of Judges, for instance, records that 'every man did what was right in his own eyes'. The history of this whole period breathes the atmosphere of the free desert communities. It is a legacy from Israel's desert experiences,

1) 15:1, 32, 36, 41, 44—47, 51, 54, 57, 59, 60, 62; 21:12; 16:8, 9; 18:24, 28; 19:6—8; 19:15—16; 19:22—23; 19:30—31; 19:38—39; 19:48.

2) Lev. 25:31. 3) Cp. Neh. 12:28, 29. 4) *ir*. 5) Num. 13:19; Isa. 42:11; 1 S. 6:18; 27:5; 2 K. 17:9; Deut. 3:5; Esth. 9, 19; cp. Ezek. 38:11; Zech. 2:4 (8). Gesenius, *op. cit.*, 531. 6) Lev. 25:29ff. 7) Josh. 24:13; Deut. 6:11. Cp. Neh. 9:25.

which tended in the direction of political independence. As regards one another, the tribes of the book of Judges had no real governmental connection, a sense of kinship and of loose alliance being their only bond. The Hebrew monarchy itself was not in any definite sense an integral unity, but rather a loose confederation of tribes. The kingship did not supersede the simple desert customs engendered by the tribal system, where all clansmen are brothers. That free village communities had not become entirely extinct even in the regal period may be inferred from the towns and villages of the time of Amos, which "constituted the basis of military enrolment, each community furnishing a proportionate number of men in case of war"<sup>1</sup>. The internal administration of the various communities bears witness to the tenacious life of the old tribal system. The invading tribes, settling by clans and households in the towns and villages of the dispossessed Canaanites, were gradually converted into a loose confederation of peasants and farmers under self-government of a local and patriarchal character.

At the same time it cannot be denied that the settlement in Canaan reacted upon the life and customs of the conquering race. Hebrew clan law could hardly have been superimposed upon the legal usages and customs of the older Amorite civilization, centering in the fortified cities, without some modification in the mutual relations of the two races. The distinction drawn by the Hebrew legislator between city and village property indicates that the process of settlement and adjustment to the new physical and social conditions had resulted in a compromise. 'If a man sell a dwelling house in a walled city, he shall have the right of redemption for a whole year after it has been sold. If it is not repurchased within a year, the house that is in the walled city shall be assured in perpetuity to its purchaser and to his descendants; it shall not be released in the year of jubilee. But the houses of the villages which have no wall around them, shall be reckoned as belonging to the fields of the country; the right of redemption shall be retained for them, and they shall be released in the year of jubilee. With regard to the Levitical cities, the Levites shall have a perpetual right of redemption in

1) *Soc. Leg. Prim. Sem.*, 232.

the case of houses in the cities of their possession. But fields belonging to the common land<sup>1</sup> of their cities may not be sold, for that is their perpetual possession'<sup>2</sup>. Thus the towns and villages occupied by the Hebrews, far from losing their identity through contact with the Amorite institution of individual proprietorship, possessed sufficient vitality to wrest from the native urbanites still remaining in the land<sup>3</sup> a concession of the first magnitude.

The newcomers in Canaan became a rural people, dwelling in villages surrounded by fields and pasture grounds. Those who still adhered to pastoral pursuits settled in tent-villages<sup>4</sup>, or clusters of tents<sup>5</sup>, closely grouped together for mutual protection. Larger or smaller communities of shepherds and herdsmen were found in many parts of the country, especially east of the Jordan and in the territory of Judah, from the beginning of the settlement down to the end of the monarchy<sup>6</sup>. Others, while continuing their interest in flocks and herds, became agriculturists and lived together in villages, situated as a rule on some natural swelling of the ground, and close to springs, or where wells could be sunk without great inconvenience. In general each village consisted of a number of houses, lacking in symmetrical arrangement, the streets, such as they were, being crooked and narrow and unpaved. The farmhouses in the plains were one-roomed, flatroofed clay huts<sup>7</sup>, or mud houses, constructed of bricks of sun-dried clay, mixed either with chopped straw<sup>8</sup>,

1) *migrash*. 2) Lev. 25:29—34. 3) Cities built on artificial mounds and defensible heights were difficult to take. Josh. 10:20; 11:13 (cp. Jer. 30:18); 13:1, 13; 15:63; 16:10; 17:11ff.; Judg. 1:21, 27ff.; 19:10—12; 2 S. 5:6ff.; 21:1—2; Judg. 2:20—23; 3:1ff. 4) See above, p. 100, notes 8 and 9. Compare also Num. 24:5, 6; 32:1ff.; Josh. 22:8. 5) Heb. *ohel*; cp. Ass. *alu*, 'village,' 'city,' Ar. *ahl*, 'clan.' On dwellings and their construction, see Benzinger, *Heb. Arch.* (1907), 87ff.; Nowack, *Hebr. Arch.*, I, 135ff.; Macalister, *Excavation of Gezer*, I, 167ff.; Vincent, *Canaan*, 65ff.; Hancock, *Archæology of the Holy Land*, 124ff.; Palmer, *Desert of the Exodus*, 120—122, 141—142, 255—259, 285. 6) Jer. 35:1ff. Cp. Hos. 12:9. Cattle, sheep, and goats are typical of the wealth of shepherds and herdsmen as is seen from the frequent equation of Heb. *migne*, 'possessions' with 'herds.' 7) Houses of clay lacked permanence (Job 4:19; 24:16; 27:18; cp. Ezek. 12:5; 13:10ff.), and needed to be repaired at frequent intervals (Eccles. 10:18). For a discussion of early Hebrew houses, see above, note 5. 8) Cp. Ex. 5:7ff.

or some other binding material. Among the highland peasantry the houses<sup>1</sup> were built of rough stones, set in mud, with flat or vaulted roofs, with low doors and small apertures for windows; chimneys are conspicuous by their absence, the smoke finding its way out of the unglazed windows or open doors. The interior of the houses was often shared by the villagers with their cattle, the former being separated from the latter by a slightly raised platform.

Palestine in the eyes of the immigrants emerging from the widely-scattered oases of the desert, was a good land, flowing with milk and honey. 'Yahwe thy God is bringing thee into a good land, a land of watercourses, of fountains and springs, issuing from valleys and hills; a land of wheat, and barley, and vines, and fig trees, and pomegranates; a land of olive trees, and honey; a land wherein thou shalt eat bread without scarcity, in which thou shalt lack nothing'<sup>2</sup>. Indications are not wanting to show that the Hebrews, on taking possession of the land promised to their forefathers, had some knowledge of agriculture. The rudimentary forms of tillage were not unknown to the progenitors of the race, for the economy of patriarchal Israel represents an intermediate stage between the migratory habits of grazing industry and the settled life of the agriculturist. According to the biblical records, the ancestors of the Hebrews came from Babylonia. The patriarchs were wandering Aramaeans<sup>3</sup> seeking pasture for their flocks and herds in the land of Canaan. Abraham wandered with his flocks over parts of Canaan, locating more particularly in the neighborhood of Hebron. He is said to have been 'very rich in flocks and herds, camels and asses, silver and gold ornaments, male and female slaves, tents and costly garments'<sup>4</sup>. But the pastoral economy of this early age was not the sole means of subsistence. Genesis 18:1 ff. implies a knowledge of the rudiments of agriculture. Abraham's hospitality, for example, was not limited to milk and butter and a dressed calf, the products of cattle-raising being supplemented with fine cakes, which Sarah had baked upon the hearth. Isaac and Jacob, although dependent very largely upon their

1) Lev. 14:34 ff.      2) Deut. 8:7-9.      3) Cp. Kraeling, *Aram and Israel*, pp. 15 ff.      4) Gen. 13:2-5; 24:35, 53. Cp. 4:20.

flocks and herds, conjoined tillage with stock breeding. The former 'sowed in the land of Gerar, and reaped in the same year a hundredfold<sup>1</sup>.' The extent of his 'cultivated land'<sup>2</sup> attracted the attention of the Philistines, who envied him. The incidents associated with the patriarch's blessing, occurred in the house of Isaac, the 'farmer' of Beersheba. Before obtaining the blessing, Jacob brought to his father some meat, bread, and wine<sup>3</sup>. The blessing itself has all the earmarks of an agricultural environment. 'The smell of my son is as the smell of a field, which Yahwe hath blessed. Therefore God give thee of the dew of heaven, and fertile fields, and plenty of corn and wine.' Jacob, we are told, ate bread and lentils<sup>4</sup>. Mention is made in Genesis 30:14 of the wheat harvest. This presupposes the existence of agriculture in Haran. The dream of Joseph, moreover, suggests that the members of Jacob's household must have given some attention to agriculture<sup>5</sup>. Grain is a necessary part of their diet. 'Now when Jacob saw that there was corn in Egypt, he said unto his sons, Get you down thither, and buy for us from thence, that we may live and not die<sup>6</sup>.' The patriarch sends as a gift to the mighty man in Egypt of the fruits of the land<sup>7</sup>. Jacob's sons, prior to their sojourn in Egypt, had been engaged in cattle-raising and agriculture<sup>8</sup>. For some reason the Egyptian governor instructs his brothers who are about to settle in Egypt to pose as a community of graziers, thus ignoring whatever relation they may have previously had to agriculture. 'And it shall come to pass, when Pharaoh shall call you, and shall say. What is your occupation? That ye shall say, Thy servants have been herdsmen from our youth even until now, both we, and also our fathers: that ye may dwell in the land of Goshen; for every shepherd is an abomination unto the Egyptians... And Pharaoh spake unto Joseph, saying, They may remain in the land of Goshen, and if thou knowest any competent men among them, then make them rulers over my cattle. Thereupon Joseph nourished

1) 26:12. 2) Eerdmans, *Alttest. Studien*, II, 41. 3) Gen. 27:15ff.

4) 25:29—34. 5) 37:5ff. 6) 42:1—2; cf. 43:1ff. 7) *zimrat ha-ares*, LXX: καρποι. Gen. 43:11. 8) Eerdmans, *op. cit.*, II, 42, 71ff.; Gunkel, *Genesis* 1910), 464.



his father, and his brothers, and all his father's house, with bread, according to the number of children<sup>1</sup>.

In the light of these considerations the common supposition that the patriarchs of pre-conquestual Israel lived a purely nomadic life can no longer bear the test of closer scrutiny. It is true the migratory instinct of pastoral life asserts itself on different occasions in the history of this period. Abraham pastured his flocks in various localities, having no absolutely fixed hold on land prior to the purchase of the cave of Machpelah. However, it must be borne in mind that the flocks and herds of the patriarchs needed daily watering at certain wells. The scarcity of such wells, in a semi-nomadic environment, would sooner or later tend to a more settled state midway between the migratory habits of pastoral life and the settled life of the agriculturist<sup>2</sup>. Thus the patriarchs wander from place to place, seeking water and pasturage, and tilling the soil as they find opportunity. But once finding themselves undisturbed in the possession of a suitable environment, their wanderings practically cease. The more permanent settlements of the patriarchs are definitely associated with Hebron, Beersheba, and the Negeb in southern Palestine.

In all probability a certain amount of tillage was practiced by the Israelites amid the pastoral employments in the land of Goshen. On the eve of their departure from Goshen, the liberated Hebrews in their haste to leave the country 'took their dough before it was leavened, their kneading-troughs being bound up in their clothes upon their shoulders'. In the course of their journey 'they baked of the dough, which they had brought from Egypt, unleavened cakes, because they had been driven out of Egypt, and could not tarry any longer, neither had they prepared for themselves any food<sup>3</sup>. Here, again, grain is an indispensable item of food. In the revolt of Dathan and Abiram against the civil authority of Moses, the leaders of the rebellion, when summoned to appear before Moses, replied, 'We will not come up. Is it a small thing that thou hast brought us up out of a land flowing with milk and honey,

1) Gen. 46:33, 34; 47:5, 6, 12.

2) Gressmann, *Sage u. Geschichte*, in *Zeitschrift f. alttest. Wiss.*, vol. 30 (1910), 25 ff.; see also his *Mose* (1913), 394 ff.

3) Ex. 12:34, 39.

to kill us in the wilderness, but thou must needs make thyself also a prince over us? Moreover, thou hast not brought us into a land flowing with milk and honey, nor given us possession of arable lands<sup>1</sup> and vineyards<sup>2</sup>. It is but a comparatively short step from the modest requirements of the semi-agricultural community in the oasis at Kadesh to the settled agricultural life of Canaan<sup>3</sup>. When the Israelites settled in Canaan proper, the greater part of which was suitable for tillage, their new environment presented a more distinctly agricultural aspect. It is not improbable that the invaders, whilst hitherto not ignorant of field labor, learned many of the arts of tilling the soil and vinedressing from the farmer-Canaanites, who were much more advanced in the agricultural arts than the semi-nomadic clans of the desert. The great mass of Israelites became tillers of the soil and lived together in settled communities. But the transition from a semi-pastoral husbandry to the economic activities of settled life was neither prompt nor complete. Hence it would be most arbitrary to assume that, after the invasion of Canaan, the group instincts of Israel's semi-nomadic environment were discarded. On the contrary, these were carried over into the new environment, and applied to the settled agricultural life of Canaan.

Ancient clan customs affecting the tenure of the soil have undoubtedly been incorporated in the agrarian laws of the Pentateuch. In the year of jubilee, with which we are more immediately concerned, the ancestral acres reverted, free of all encumbrance, to the original occupier, or his legal heirs. The resumption by the dispossessed heir, after seven sabbatical cycles, of the precious patrimony, which constituted part and parcel of the clan's allotment, practically amounts to a periodical redistribution of arable and other lands for the special benefit of unfortunate villagers, whose poverty had forced them to alienate temporarily part or all of their holdings. The primary object of this

1) So Baentsch, *ad loc.* 2) Num. 16:12—14. 3) Agriculture in Canaan was born in the remote past, as evidenced by the implements found at Tell-el Hesi. The grindstones of the neolithic Troglydites unearthed at Gezer show that the pre-Semitic cavedwellers (3000—2000 B. C.) of this region practiced tillage of a rudimentary type.

law was to keep intact the original allotment of land<sup>1</sup>, held in direct tenure from Yahwe.

We have noted that, according to the biblical records, the land was apportioned tribe by tribe, and clan by clan, and then, by implication, to the heads of households within the clan. The division of the country was accompanied by a provision that tribal allotments should be in proportion to the number of adult males in each group, 'To each tribe shall its inheritance be given according to the number of those who were numbered of each tribe'<sup>2</sup>. Seemingly, the land, which was to be distributed among the tribes and clans of Israel, was divided accordingly by means of a measuring line<sup>3</sup>, or some other surveying instrument. The process of allotment, in Josh. 18:2ff, is preceded by a rough survey of the available territory; the land is mapped out on a scroll and divided into seven portions, corresponding to the number of tribes to whom no definite assignments had as yet been made. The location and quality of the several portions, prior to their distribution among the tribes in question, is referred by the casting of lots to the will of Yahwe, 'Then Joshua cast lots for them in Shiloh before Yahwe'. There could be no appeal in such matters from the decision of an impartial Deity, for 'the lot (*goral*) is cast into the lap, but all its decision (*nishpat*) cometh from Yahwe'<sup>4</sup>. By a natural transition the area thus assigned came to be designated as the *goral*<sup>5</sup>, or allotted portion. Owing to the frequent employment of the measuring line (*hebel*) for surveying purposes, the allotment also came to be known as the *hebel*<sup>6</sup>, or the area, which has been

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1) It has been estimated, according to different calculations, that each of the 600,000 yeomen (Ex. 12:37; 38:26; Num. 1:46; 2:32; 11:21; 26:51) received originally from sixteen to twenty-five acres of land. The Locrians had a law restraining the sale of land with a view to keep the lots of land of equal size (Aristotle, *Pol.*, 2:7; cf. 2:9). 2) Num. 26:54; cp. 33:54. 3) Heb. *hebel*, Ar. *habl*. Cf. Deut. 32:9; Josh. 17:5, 14; 19:9; Ps. 105:11; Isa. 34:17; cp. Am. 7:17; Ezek. 40:3ff.; Zech. 1:16; 2:1ff.; 2 K. 21:13; Job 38:5; Lam. 2:8. 4) Prov. 16:33. Cp. Ex. 28:15-30; Lev. 16:8; Num. 26:55-56; 34:2, 13; Josh. 18:6, 8, 10; 19:51; 1 Chron. 24:5, 31; 26:13, 14; Neh. 10:35; 11:1; Esth. 3:7; Ps. 22:18; Prov. 1:14; 18:18; Ezek. 24:6; Jon. 1:7; Nah. 3:10. 5) Num. 36:3; Josh. 15:1; 17:1, 14, 17; 18:11; Judg. 1:3; Ps. 125:3. 6) Deut. 32:9; Josh. 17:5, 14; 19:9; Ps. 105:11; Isa. 34:17.

measured by line. In this connection it would be interesting to know whether the original assignments, especially in so far as they affected the arable lands of unwalled villages, were subject at stated intervals to re-allotment among the members of the several villages. Allusion is made in Micah 2:4—5 to the custom of allotting lands under the auspices of an assembly of people. The approach of the Assyrian conqueror will be fraught with disastrous consequences, 'The landed portion of my people is being measured off with the measuring line, and there is no one to restore it. Our captors are dividing our fields. Therefore thou shalt have none that shall stretch the measuring line over an arable share (*goral*) in the assembly of Yahwe'<sup>1</sup>. In Jeremiah 37:12 the prophet, apparently, is on the point of going to Anathoth in order to participate in the allotment of certain lands, belonging to the agnatic group of which he is a member<sup>2</sup>. The passage in Psalm 16:5—6 is strongly reminiscent of the custom of periodical re-allotments, prevailing in many parts of modern Palestine, 'Yahwe is the portion of my part; thou maintainest my lot (*goral*). The measuring lines are fallen unto me in pleasant surroundings; indeed, my possession pleases me.'

The promised land was distributed by lot under the direction of Israel's divine sovereign. The land is Yahwe's, chosen by him as an inalienable possession, and given<sup>3</sup> by him to his people; hence it cannot be alienated in perpetuity. 'Thou bringest them and plantest them in the mountainous land of thine inheritance, in the place, O Yahwe, which thou hast prepared for thy abode<sup>4</sup>.' The patriarchs are told that the land of Canaan shall be given to their descendants, "and they shall inherit it for ever"<sup>5</sup>. But the right of inheritance, so far as the ancient Israelite is concerned, is far from absolute; he inherits not in his own right but as a member of some kindred group, — the tribe, the clan, and the household. Anciently, the kindred group and not the individual is the unit of landholding.

1) The last verse will be better recognized by the more familiar translation, 'Therefore thou shalt have none that shall cast a cord by lot in the congregation of Yahwe'. 2) Gesenius, *op. cit.*, 212. 3) Gen. 12:7; 26:4; 28:13; Lev. 25:2; Deut. 4:21; 11:9; 15:4; 19:10; 20:16; 21:23; 24:4; 25:19; 26:1; 32:49. 4) Ex. 15:17. Cp. Lev. 25:23; Ps. 68:10; 79:1; 94:5; Jer. 2:7. 5) Ex. 32:13. Cp. Gen. 13:15; 17:8.

The proprietary unit in the law of jubilee is the clan rather than the individual clansman. Theoretically, the clan which receives title at the conquest retains it in perpetuity. The redistribution<sup>1</sup> in the jubilee of all ancestral holdings contributed to the reestablishment of the original arrangement regarding assignments of land to the clans of Israel. The individual householder doubtless received a proportionate share of the clan's property, the lot in all probability determining the specific parcel or parcels to be assigned to the head of each household. Nevertheless he receives his share, not by virtue of his rights as an individual, but in so far as he is a member of a definite clan. As has been pointed out, the territory or district occupied by the semi-nomadic clan belongs to the group rather than the individual clansman. Similarly, the unwallled village inhabited by a group of clansmen belongs, not to the individual villagers as such, but to the body of villagers collectively. In early Israel the grazing, and even the arable lands, were probably looked upon as the collective property of the village to which they were attached. The frequent mention of the *migrashim*, or common pasture lands, suggests that with the occupation of Canaan the ownership of lands appertaining to the agricultural villages was forced into a tribal mould. "The pasture ground remained common property<sup>2</sup> longest, while the cultivated ground gradually became the private possession of individuals<sup>3</sup>."

The land of Canaan was well adapted to agricultural pursuits. It was not, broadly speaking, like the land of Egypt, 'where thou sowedst thy seed, and wateredst it with thy foot, as a garden of herbs'. It is not a land dependent upon artificial irrigation<sup>4</sup>, but a land of hills and valleys, drinking in the rain and dew of heaven. 'The eyes of Yahwe are always upon it, from the beginning of the year even unto the end of the year'<sup>5</sup>. God himself instructs the husbandman in the principles of his practice<sup>6</sup>, and appears as the planter of a vineyard<sup>7</sup>. Agriculture was an important element in Hebrew life. The

1) Among the Dalmatians the land was redistributed every eight years. 2) Common, that is, to the members of a village community.

3) *American Journal of Theology*, 1, 733. 4) But compare Job 38:25;

Prov. 21:1. 5) Deut. 11:9, 12. 6) Isa. 28:24-29. Cp. Gen. 3:23.

7) Isa. 5:1-7.



chief implement used by the farmer was a wooden plough drawn by a yoke of oxen. The area ploughed in a day by a yoke of oxen was called a yoke<sup>1</sup>, or 'acre'. Three great harvest festivals were celebrated annually, — the first in the spring of the year at the beginning of the barley harvest; the second, seven or eight weeks later, at the end of the wheat harvest<sup>2</sup>; and the third in the autumn at the end of the vintage season<sup>3</sup>. The predominance in early Israel of agricultural pursuits over other forms of industry is evident from numerous regulations about fields, oliveyards, vineyards, and harvests. In accordance with the provisions laid down in these regulations, the dependent members of the community shall be entitled to the gleanings of field, oliveyard, vineyard, etc.<sup>4</sup>. Every Israelite apparently, whether rich or poor, had a certain common right in the natural products of the soil. Further, the fallow of the seventh year<sup>5</sup>, like that of the jubilee year, was not simply an agrarian measure originating solely in the desire to prevent the exhaustion of the soil. It is expressly stated that the spontaneous produce of the fallow year should be left for the poor and needy. The custom of allowing the land to remain untilled once in seven years probably goes back to a state of communistic agriculture, that is, "of a stage of society in which the fields belonging to a village are the property of the villagers collectively, individuals only acquiring the use of a certain portion for a limited period, and the rights of the community being recognized by the individual landowners being obliged, at stated intervals, to renounce their claims to the use, or produce, of the soil, in favor of the body of villagers generally. The sabbatical year is similarly an

1) Heb. *semed*. Cf. 1 S. 14:14; Isa. 5:10. 2) The threshing-floor to which the grain was taken and threshed was the property of the village community. 3) Ex. 23:15—16; 34:18, 22; Deut. 16:1ff. Part of an agricultural calendar discovered at Gezer and probably dating somewhere between 1000—550 B. C., contains the following names for the months — (1) Month of ingathering (October); (2) Month of sowing; (3) Month of late (sowing?); (4) Month of flax-harvest; (5) Month of barley harvest; (6) Month of harvest of all (other grains?); (7) Month of pruning (vines); (8) Month of summer fruit. Barton, *Archaeology and the Bible*, 138. 4) Lev. 19:9—10; 23:22; Deut. 23:24—25; 24:19—21. 5) Ex. 23:10—12; Lev. 25:1ff.; cp. Deut. 15:1ff.

institution, limiting the rights of individual ownership in the interests of the community at large"<sup>1</sup>. That there was some limitation to absolute proprietorship is proved by the preferential right of first purchase and of buying back. Clan notions of landed property, it will be remembered, are communalistic rather than individualistic.

We have seen that the incoming desert-clans were gradually converted into a loose confederation of peasants and farmers under self-government of a local and patriarchal character. The internal administration of the country towns and village communities testifies to the tenacity of the old tribal system. The authority of the elders, who figure in almost every period of Hebrew history, depended mainly upon old established custom. As the representative heads of the different tribal units, they must be consulted in all matters of importance. Thus Moses convokes 'the elders of Israel'<sup>2</sup>, in order to acquaint them with his plans for the liberation of the enslaved clans. It is necessary to secure their coöperation since they are to be associated with Moses in the leadership of the people. In Exodus 12:21 the institution of the passover, which concerns the clan rather than the individual, is adopted by 'all the elders of Israel' in their official capacity as the representatives of the clans in Goshen, 'Then Moses said unto them, Go forth and take lambs from the herds for your clans', and prepare the passover. Moses, in the incident related in Exodus 17:2 ff, precedes a delegation of elders charged with the duty of witnessing the miraculous production of water from a rock. 'Pass on before the people, and take with thee of the elders of Israel; and thou shalt smite the rock, and there shall come water out of it, that the people may drink. And Moses did so in the sight of the elders'. So, again, in Numbers 16:25, the elders of Israel accompany Moses, whose civil authority had been called in question by members of the tribe of Reuben, in order to witness the vindication of their chieftain<sup>3</sup>. At Horeb-Sinai 'seventy of the elders of

1) Driver, *Deut.*, 177. Cp. *American Journal of Theology*, I, 739; Buhl, *Soz. Verh. d. Israeliten*, 64. 2) Ex. 3:16—18; 4:29—31; Lev. 9:1. We also meet with 'the elders of the people' (Ex. 19:7), and 'the elders of the congregation' (Lev. 4:15; Judg. 21:16). 3) To judge from the analogy of Arabian tribal organization, one might suppose that the position

Israel<sup>1</sup> participate in the establishment of a covenant between Yahwe and the people as a whole. Here the people are represented by a special council of seventy, selected from the elders of all the tribes, as attested by the reference in Deuteronomy 5:23, 'all the heads of your tribes and your elders drew nigh unto me' at the mount of God. The covenant is ratified by the people, who 'answered with one accord and said, All the words which Yahwe hath spoken will we do and be obedient'<sup>2</sup>. To the elders of the people, however, Moses had previously said, 'Tarry ye here for us until we return, for, behold, Aaron and Hur are with you; if any man have a matter of dispute, let him come unto them'. In Exodus 18:12—27 the leader, or chief elder, of the associated tribes and 'all the elders of Israel eat with Moses' father-in-law before God'. Seeing that Moses had taken upon himself the entire administration of justice, Jethro suggests to his son-in-law the subdivision of the judicial function into major and minor, assigning the latter to an organized force of subordinate judges, and reserving the former for his son-in-law. When Jethro 'saw all that he was doing for the people, he said, Why sittest thou thyself alone, while all the people stand about thee from morning until evening? And Moses said, Because the people come unto me to inquire of God. Whenever they have a matter of dispute they come unto me, and I judge between the contending parties, and make known to them the pronouncements and decisions of God. Moses' father-in-law then said unto him, This method is too burdensome for thee; choose from the people capable, God-fearing, reliable men, hating covetousness, and place over them<sup>3</sup> rulers<sup>4</sup> of thousands, of hundreds, of fifties, and of tens. Then Moses chose men of worth out of all Israel, and set them as heads over the people. And they judged the people at all seasons; the difficult cases they brought unto Moses, but the minor cases they adjudicated

of Moses corresponded, roughly speaking, with that of a modern Arab *shayh*, who is simply the chief elder of the clan or tribe.

1) Ex. 24:1ff. There is a similar reference in Num. 11:16ff. to an assembly of seventy men, selected from the whole number of the elders of Israel. Unfortunately the manner of their selection is not stated.

2) Ex. 24:3, 7. Cp. 19:8. Josh. 24:22, 24. 3) i. e., the people. 4) 'captains,' 'leaders.'

themselves'<sup>1</sup>. Deuteronomy 1:15 informs us that the judiciary officers appointed by Moses were none other than the elders or heads of the different tribal divisions. The judicial function of the heads of tribes and clans is not an innovation on the part of Moses, since it is in accord with ancient tribal practices. Moses simply adapted an old custom to the growing needs of a more complex community. The patriarchal authority of the unfederated life of the past proved inadequate under the new covenant relation of the tribes of Israel. During the stay in Kadesh some of the rights of the various tribal units passed over to the elders, who had been chosen for the purpose of assisting Moses in the administration of justice. By the side of the tribal elders exercising judicial functions stand the *shoterim*, 'scribes'<sup>2</sup>, 'overseers'<sup>3</sup>, executive 'officers'<sup>4</sup>. In some passages they carry orders to the hosts of Israel<sup>5</sup>; in others they are mentioned along with different classes of officers, such as 'heads and officers among your tribes'<sup>6</sup>, 'judges and officers'<sup>7</sup>, 'the elders of your tribes and your officers'<sup>8</sup>, 'the heads of your tribes, your elders, and your officers'<sup>9</sup>, 'elders, officers, and judges'<sup>10</sup>, 'the elders, heads, judges, and officers of Israel'<sup>11</sup>. It is not unlikely that the 'elders', 'heads', and 'judges' are synonymous terms, referring, as we have seen, to Moses' assistants in the government of the people. The members of the official class, including the *shoterim*, were probably selected from the elders of the different tribal divisions. Tribal elders are referred to in Judges, Samuel, and Kings. Thus we read of 'the elders of Gilead'<sup>12</sup>, saying to Jephthah, 'Come and be our commander, and let us fight against the Ammonites. Then Jephthah went with the elders of Gilead, and the people made him chief and commander over them'. In I Samuel 4:3 'the elders of Israel' command the army; they come to Samuel, demanding a king<sup>13</sup>. Saul, confessing his sin, entreats Samuel to honor him with his

1) In Num. 11:17 the seventy elders who are associated with Moses in his prophetic inspiration shall receive for administrative purposes a portion of the spirit resting upon Israel's great leader.

2) Schrader, *K. A. T.*<sup>2</sup>, p. 153. 3) Ex. 5: 6 ff. 4) Num. 11:16. 5) Deut. 20:5, 8, 9; Josh. 1:10: 3:2. 6) Deut. 1:15. 7) 16:18. 8) 31:28. 9) 29:10 (9). 10) Josh. 8:33. 11) 24:1. 12) Judg. 11:5 ff. 13) 1 S. 8:4 ff.

presence 'before the elders of his people and before Israel'<sup>1</sup>. The prophet then consents to bow with him in worship in the sight of the tribal heads of Benjamin and of Israel, thus preserving, for the time being at least, the semblance of the kingly office. David, anxious to please the southern chieftains, sends presents to 'the elders of Judah'<sup>2</sup>. In 2 Samuel 5:3 'all the elders of Israel'<sup>3</sup> appear before David in Hebron, and make him king over all Israel. After the death of Absalom, David makes overtures to 'the elders of Judah', saying, 'Why are ye the last to bring back the king'<sup>4</sup>? In 1 Kings 8:1 ff 'the elders of Israel, and all the heads of the tribes' take part in the Solomonic temple procession. Whilst some of the prerogatives of 'the elders of Israel' gradually fell into the hands of royal officials, it is nevertheless quite significant that Ahab should deem it necessary to consult 'the elders of the land'<sup>5</sup> in a matter of grave importance. Hearing Ben-hadad's unreasonable demands, 'all the elders and all the people said unto him, Do not hearken nor consent! Therefore he said unto the messengers of Ben-hadad, This I cannot do'. We also hear of 'the elders of Judah and of Jerusalem' in connection with the public promulgation of the newly discovered book of the law<sup>6</sup>. 'The elders of Judah'<sup>7</sup>, and 'the elders of Israel'<sup>8</sup> recover much of their importance in and after the exile. They are the official representatives of the exilic clans, and may be regarded as a revival of the earlier clan constitution of Israel.

However, it is the city elders, or local authorities, of whom most is heard in pre-exilic literature. We need not suppose that the conditions of settlement effected a radical change in the status of the elders. Mc Curdy observes that 'the habits and relations of the old patriarchal life were not discarded in the permanent institutions of the fixed settlements. On the contrary, it is possible to trace the influence of the patriarchal system in the establishment and regulation of the Semitic cities, and even to find there a reproduction in type, if not in name or detail, of the essential elements of the old tribal government'<sup>9</sup>. The

1) 15:30. 2) 30:26. 3) Cp. 17:4, 15. 4) 19:11 ff. 5) 1 K. 20:7 ff. Cp. Jer. 26:17; Prov. 31:23. 6) 2 K. 23:1. 7) Ezek 8:1. Cp. Ezra 5:5, 9; 6:7, 8, 14. 8) 14:1; 20:1, 3; cp. 8:12. 9) *Hist. Proph. Mon.*, I, pp. 35—36.



elders of the incoming tribal divisions were simply converted into local guardians of justice, who remained the chief officials in the new social order. They appear in a judicial capacity, each community recognizing the authority of its own council of elders. 'In all the towns<sup>1</sup>, which Yahwe is about to give thee, shalt thou appoint, according to thy tribes, judges and officers, who shall render to the people just decisions (*mishpat*)'<sup>2</sup>. The elders not infrequently acted as judges in the trial of capital offences. Should the murderer flee into one of the cities of refuge, then 'the elders of his city' shall cause him to be delivered to the avenger of blood for execution<sup>3</sup>. On the other hand, 'the homicide who killed any one by accident' may avail himself of the right of asylum: he shall flee to one of the cities of refuge, and 'state his case to the elders of that city, and they shall receive him into the city'<sup>4</sup>. The local authorities, moreover, represent the city in controversies with other cities as to responsibility for an untraced murder<sup>5</sup>. As immediate responsibility for the crime rests upon the city nearest to the scene of the murder, 'thy elders and thy judges shall measure the distance to the cities round about the one who is slain, and the elders of the city nearest to the spot where the corpse was found shall make solemn ceremonial disavowal of the crime on behalf of the community. And the elders of that city shall wash their hands over the heifer, and shall say, Our hands have not shed this blood, neither have our eyes seen it'. In the case of a disobedient son<sup>6</sup> 'the elders of his city' take cognizance of the parental complaint and presumably impose the death sentence. 'Then all the men of his city shall stone him to death'. Questions affecting the rights of the individual household naturally came under their jurisdiction. Thus the parents of the young woman who has been slandered by her husband 'shall bring the tokens of the young woman's virginity unto the elders at the city gate; and the young woman's father shall say unto the elders, I gave my daughter unto this man, and he hateth her; yet these are the tokens of my daughter's virginity. And they shall spread the garment before the elders of the city' who shall inflict punishment for slander<sup>7</sup>. In Deutero-

1) 'gates.' 2) 'and they shall judge the people with righteous judgment (*mishpat*).'  
 Deut. 16:18. 3) 19:11—13. 4) Josh. 20:4.  
 5) Deut. 21:1—9. 6) 21:18—21. 7) 22:13—19.

onomy 25:7—9 the unobliging brother-in-law is cited before the elders of his city for noncompliance with the duty of levirate marriage. 'The elders shall speak unto him; and if he insist, and say, I have no desire to take her, then his sister-in-law shall draw nigh unto him in the presence of the elders, and loose his sandal from off his foot, and spit in his face'. Under somewhat similar circumstances Boaz 'took ten of the elders of the city, and said, Sit ye down here. And he said to the kinsman<sup>1</sup>, Naomi who has returned from the land of Moab is about to sell a parcel of land, which belonged to our brother Elimelech. Buy it in the presence of those assembled and in the presence of the elders of my people'. But the kinsman renounces his rights in favor of Boaz, who 'said unto the elders, and all the people, Ye are witnesses this day that I have bought all that was Elimelech's', including Ruth, Mahlon's widow. 'Then all the people that were in the gate<sup>2</sup>; and the elders said, We are witnesses'<sup>3</sup>. Obviously, the elders possessed local jurisdiction in matters of domestic and communal concern. They persist as a local institution through the whole course of Hebrew history. In view of the large number of elders mentioned in Judges 5:14, 16, we shall not go far wrong if we assume that 'the elders of Succoth' included the heads of the leading households<sup>4</sup>. When Jabesh-Gilead is besieged by the Ammonites, 'the elders of Jabesh'<sup>5</sup> request seven days' respite in which to solicit help from their kinsmen across the Jordan. When the elders of Bethlehem saw Samuel, they trembled and said, 'Comest thou on a peaceful errand? And he said, Yes! I am come to sacrifice unto Yahwe. Come with me to the sacrifice'<sup>6</sup>. To secure the condemnation of Naboth, Jezebel appeals to the elders of Jezreel. Preserving the appearance of regularity, the pliant 'elders and nobles did as Jezebel had requested. Then they sent to Jezebel, saying, Naboth has been stoned and is dead'<sup>7</sup>. Jehu, the aspirant to the throne, wrote 'to the officials of Jezreel<sup>8</sup>,

1) *go'el*. 2) i. e., the open space around the gate where the elders sat officially for the administration of customary justice. 3) Ruth 4:1 ff. 4) The apparent synonymity of Hebrew *'ish*, or householder, with *zagan*, or elder, points in the same direction. Cf. S:5, S. 9, 14, 16. Cp. 1 S:11:1 ff. 5) 1 S. 11:3. 6) 16:1, 5. 7) 1 K. 21:11, 14; cp. v. S. 8) Samaria; so Gk.

to the elders, and to the guardians of Ahab's sons, saying, Now as soon as this letter cometh to you, seek out the best and most capable of your master's sons, and set him on his father's throne, and fight for your master's house'. Thereupon the royal officials, 'together with the elders and the guardians, sent to Jehu, saying, We will not make any one king; we are thy servants'<sup>1</sup>. The elders, it appears, were of sufficient importance to be included in the negotiations. Yahwe, we are told, will enter into judgment with the elders and royal officials of Jerusalem and of Judah, 'Ye have eaten up the vineyard, the spoil of the poor is in your houses. What mean ye that ye crush my people and grind the face of the poor?'<sup>2</sup> In 2 Kings 23:1 Josiah summons 'all the elders of Judah and of Jerusalem'. After the exile we meet with 'the elders of every city'<sup>3</sup>.

The elders as an institution are not confined to the Hebrews. The Old Testament points to their existence in Egypt<sup>4</sup>, Midian, Moab<sup>5</sup>, and Canaan<sup>6</sup>. Mention is made in Ezekiel 27:9 of the elders of the Phoenician town of Gebal<sup>7</sup>. These functionaries, constituting the local authority, or a kind of senate, occur also in other cultural areas. Robertson Smith, for instance, alludes to 'the senates of elders found in ancient states of Semitic and Aryan antiquity alike'<sup>8</sup>.

Anciently, the household, or sept, is subject to the rule of the eldest male ascendant. With the expansion of the household, or sept, into the clan, part of the patriarchal authority passed over to an assembly of elders composed of the heads of the leading households. In time of stress the most influential household may have enjoyed a sort of preëminence, in which case the head of such a household would naturally become the chieftain of the clan<sup>9</sup>. As the clan enlarges to the tribe, the

1) 2 K. 10:1—5. 2) Isa. 3:14—15. Cp. Joel 1:2, 14: 2:16. 3) Ezra 10:14. For the later period, see Jdth. 6:16; 7:23; 8:10; 10:6; 13:12; 1 Mac. 12:35—37: Josephus, *B. J.*, II, 24:1: Sheb. 10:4; Sanh. 11:4; Mtt 5:22; 16:21; 26:47, 57; Mk. 8:31; 13:9; Lk. 7:3; 9:22; Acts 4:5ff. On the general subject of elders, see Seesemann, *Die Ältesten im A. T.*; Nowack, *op. cit.*, I, 300ff.; Benzinger, *op. cit.*, §§ 48—49. 4) Gen. 50:7. 5) Num. 22:4, 7. 6) Josh. 9:11. 7) Cp. Winckler, *Tell-el-Amarna Letters* (1896), p. 122. 8) *Rel. Sem.*, p. 34. 9) This applies also, under given conditions, to the most powerful and aggressive clan within the tribal group.

latter is governed by the elders of the clans collectively. Under the old tribal system the elders coincided with the heads of the clans and households, appertaining to the tribal group. The judicial functions of the elders of the various tribal divisions continued under the new conditions of local government. In place of the elders of the semi-nomadic tribal divisions, we now have the ruling council of a town, village, or district, composed of the heads of clans and households, dwelling together in settled communities. From the settlement in Canaan until the consolidation of the kingdom under David, Israel's tribal system is on the ascendant, as attested by the internal administration of Hebrew towns and villages. As the 'city' was only an enlarged village with a walled enclosure, the functions of 'the elders of the city', already considered, may be predicated also for the local village authorities. We may safely assume that as late as the regal period the Hebrew village community was in the main a self-governing body, the royal government contenting itself with the receipt of the usual taxes and tribute<sup>1</sup>. The Hebrew village community was probably independent of the central government as far as internal organization and administration were concerned.

## Chapter VII

### The Palestinian Village Community

The tribe, in pre-Islamic times, as at the present day, comprises a plurality of clans and septs, or households, commonly called 'families'.

The primal unit of society is the 'family', which, under patronymic rule, embraces all the descendants of a great-great-grandfather. Within this circle of kinsmen, which includes from three to five generations, the feeling of solidarity is most intense. All are 'brothers' through their participation in a common blood.

1) Benzinger, *op. cit.*, 261. In addition to these each villager was required to turn over to the local authorities one thirtieth of his entire income for the support of the poor and needy in the community. Deut. 14:28-29; 26:12-13.

In process of time the *rahṭ*, or family group of Arabic terminology grows into a clan both by natural and artificial means. The clan, properly speaking, is a kinship organization. Kinship, in this sense, however, is not to be confused with consanguinity, for bloodbrotherhood may be established by fictitious kinship through adoption and covenant. The person thus admitted into the group becomes a brother of all its members with all the rights and privileges of a fellow clansman.

The above principles of clan-formation apply also to the tribe<sup>1</sup>, which is but an extension of the family group and clan respectively. The tribal organization lies at the very root of Arabian life. Not even *Muḥammad* succeeded in overthrowing it. In his first temple oration the prophet, speaking of the disadvantages of the old tribal system in the new religious community, which he was about to establish, says, 'All men are descended from Adam. Ah, ye people, I have created you man and wife, and have divided you into tribes and clans, in order that ye might perceive that the most pious among you is the noblest'<sup>2</sup>. True nobility, in other words, is not conditioned upon long pedigrees derived from tribal genealogies, moral fellowship, in the new community, being worth more than tribal relationship. But in spite of the transforming influence of Islam in the realm of religion, the tribal system persisted. "The life of the desert does not furnish the material conditions for permanent advance beyond the tribal system"<sup>3</sup>. Its outstanding feature is the solidarity of the family group, clan, and tribe in all matters pertaining to religion and every-day life.

The family group, to begin with, was a religious community. This is clear from the ancestor cult of ancient Arabia as well as from the religious motives underlying the duty of blood-revenge<sup>4</sup>. The 'death-owl' of Arabian poetry, shrieking for the blood of the slayer, owes its existence to the ancient conception of the sanctity of life. Blood-vengeance is one of the mandates of religion, as the honor of the kindred god was involved in the sanctity of the blood, which flowed through the veins of all the members of the religious community. Murder, being an

1) *ḥayy*.

2) Procksch, *Blutrache bei den vorislamischen Arabern*, 85.

3) Smith, *Rel. Sem.*, 34.

4) Procksch, *op. cit.*, 33, 41 ff.



offense against the group to which the slain man belonged, demands group action. The carrying out of vengeance for bloodshed was primarily the concern of the family group, the nearest kinsman of the murdered man taking the initiative. Among the modern Bedawin, who preserved the blood-feud in its nomadic purity, the active and passive solidarity of the family group holds good to the fifth generation. When *Muhammad* sought to displace the prevalent notions concerning blood-revenge by a universal brotherhood, in which higher ethical standards were to prevail, he came into conflict with immemorial usage. Finding that the Arabs of his day were unable to think in other than kinship terms, he agreed to a compromise by according to the nearest kinsman of the slain man's family group the right of execution in the event of his refusal to accept the proffered 'price of blood'. But the old custom of indiscriminate revenge is now restricted to the execution of the murderer himself. Obviously, the principle of 'family' revenge was so deeply ingrained in the whole life and thought of Arabian society that it was well-nigh impossible to eradicate it. Otherwise *Muhammad* would not have assigned a place of such undue prominence to the avenging kinsman. From the standpoint of higher ethics this was a fundamental mistake, for after all, murder continued to be looked upon primarily as a violation of the family group and not of the whole social order.

But the obligation of retaliation in pagan Arabia does not cease with the primary unit of organization. If the family group is too weak to exact vengeance the clan, and even the tribe, assume the duty, for, in the last analysis, the blood-feud is a 'family', clanal, and tribal affair. Under the ancient view of communal ethics, the law of retaliation receives a communal application on the principle of collective responsibility. Thus a clansman is killed by a member of another group. Responsibility for that murder rests, not upon the murderer alone, but upon the social group of which he is a member. By this act of aggression the fighting strength of the aggrieved clan has been weakened. The members of the dead man's clan now seek to compensate themselves for their loss by slaying some member of the other group, not necessarily the actual murderer, for, as a matter of fact, any tribesman could be slain in place of the

real offender. But as blood shed demanded bloodshed in requital this often led to neverending feuds. The communal aspect of the blood-feud has its origin in a community of blood, whether real or feigned, which flows in the veins of all the members of the kindred group. For instance, in a case of homicide Arabian tribesmen, instead of naming the individual victim, would simply say, 'Our blood has been shed'<sup>1</sup>. An injury done to a tribesman is a tribal injury involving tribal responsibility. So, in the case of a member of any group of kinsmen, whether large or small. Within the social group all bloodshed is regarded as murder, and the murderer is outlawed forthwith by his family group. The decision of the primal unit of society with respect to the murderer in its midst is binding in equal measure upon the clan and the tribe, to which the family group belongs, for the murderer has violated the sanctity of tribal blood. But the manslayer might escape the immediate consequences of his act by seeking the protection of a member of another tribe. The protection thus accorded is recognized by the protector's tribe, every member of which would undertake his cause and, if necessary, exact vengeance for his blood. From the point of view of tribal ethics no man is a criminal, who has slain an outsider. Consequently the tribe will protect such a man, especially if he belongs, either by birth or voluntary adherence, to its 'brotherhood'.

Communal vengeance, as distinguished from individual revenge, is the outgrowth of the tribal system. It is rendered possible by the autonomy of the tribe as well as by the solidarity of the tribe and its subdivisions, in which each individual is answerable for the other<sup>2</sup>. The feeling of the solidarity of the clan is a recognized principle in Palestine down to the present day. "Reciprocal liability extends not only to all members of the family, in the stricter sense, but also to the whole kindred, when the case is of a serious nature, such as murder . . . The government, of course, knows of this solidarity, and when a crime is committed, and the author escapes, the next-of-kin, or even anyone that can be arrested, is imprisoned till the money is paid, which, of course, is done by every one in equal

1) Smith, *op. cit.*, 274.      2) Proksch, p. 2.

shares"<sup>1</sup>. In pre-Islamic Arabia, if through the consciousness of its own weakness, a tribe was compelled to accept the payment of a fine in lieu of the right of blood-revenge, an assessment might be levied on any member of the aggressor's tribe in the event of his inability to pay it, or on his tribe as a whole.

Passing from the communal side of social morality, with its religious sanctions, to the sacrificial system, which constitutes the very heart of religious devotion, we are at once confronted with a communal conception of religion. The community, whether conceived as a larger or smaller tribal division, is a religious unity. Anciently, the circle of religious solidarity was the group of kinsmen. Religion was an affair of the group rather than of the individual, as is shown by the public or quasi-public character of every sacrifice, no sacrifice being complete without guests. "The regular tribal sacrifices were communal acts of table-fellowship through which the members of the tribe maintained and developed their social and religious unity through communion with their god"<sup>2</sup>. Viewed as a social act, the sacrificial meal has an ethical significance. By eating and drinking together those sharing the sacrificial meal become 'brothers' automatically with all the obligations and duties of 'brotherhood'. Every sacrificial act pointed to the idea that man does not live for himself only but for the members of his social group.

If the religion of the Arabs exerted little or no influence on intertribal morality, neither can it be said that the tribe was ever lost in the state. The tribe is an autonomous body and has a solidaric unity. Its unity is maintained by the principle that all the members of the tribal group must act together in time of war. Any permanent political organization is distasteful to the denizens of the desert. It is only in war or on the march that the tribal *shaykh*, who has been chosen for his qualities of leadership, exercises any active authority. The political ideal of the tribesman finds expression in a loyalty accorded not so much to the tribal chief as to co-equal fellow-members. Politically,

1) *Palestine Exploration Fund Quarterly Statement*, January, 1906, p. 14.

In certain parts of Arabia "the blood-money between tribe and tribe is now eight hundred dollars, which is contributed by all the tribesmen of the slayer, and is equally divided among all the males of the tribe." Smith, *Kinship*, 64. 2) Gordon, *Early Traditions of Genesis*, 212-213.

the tribe exists only for purposes of war and of migration. Each tribe has its own banner. Sometimes, as at Mecca and Medina in the time of *Muhammad*, a coalition of tribes might, under the imperious necessity for mutual help against enemies, unite temporarily under the same banner. In general, however, there was no definite political organization for the regulation of intertribal affairs. Before Islam, politics is dominated by the interests of the tribe and its subdivisions. The supposed solidarity of these kinship groups proved a great hinderance to the full realization of *Muhammad's* religious ideals, the individual tribes preserving their independence and identity in the new community. This same clannishness has been fatal to the political development of the modern *fallahin*<sup>1</sup> in the rural villages of Palestine. Of national unity there is absolutely none, because of a lack of coherency and of patriotic sentiment. These 'cultivators' of the soil are divided into clans governed by *shayhs*. Each clan is a unit and opposed, as a rule, to all other clans. To their village *shayh* they show but a moderate respect. He enjoys no exclusive authority, his authority, such as it is, being shared at times by another *shayh* in the same village. The chief *shayh* of the clan or district, on the other hand, is more highly esteemed, especially if he have a reputation for generosity and valor. And yet, even the chief elder of the clan or district is nothing more than *primus inter pares*.

Economically, the unity of the tribe appears in the camels and dwellings possessed in common by its members<sup>2</sup>. In a state of society, where the social unit is the circle of tents pitched at one spot, the ownership of cattle and tent-dwellings is vested in the group as a whole, or rather in the active members of it. Without adequate protection, tribal property may change hands constantly. Every tribesman is fully conscious of his utter dependence upon his tribe for personal protection, for food and shelter. Even the tent in which he lodges is not his own, for it may be lost in a night, unless it is protected by the group to which he belongs. The conditions of nomadic life are not conducive to security of tenure, owing to the frequency

1) These Palestinian peasants are the modern representatives of various Semitic and other races. 2) Proksch, *op. cit.*, p. 4.

of hostile encounters with rival tribes, wandering about with their cattle and tents for forage and for ampler means of subsistence. The peculiar economic character of Arabia facilitated the growth of the clan for the sake of defending, in case of attack, its date-growing oases and its domestic animals grazing in the pasture lands within its territory. Arabia presents two principal types of clan-formation, viz., the communal clan and the republican clan, the former being found in the oases, and the latter in trading centers along the caravan routes. Of the two, the communal clan would, in Arabia at least, be the more important, particularly in view of the dependence of both classes on the oases<sup>1</sup>. Both types of clanformation are found in Arabia to-day. Common property rights, however, are not limited to the communal clan of Arabia. Strabo, in his description of Arabia Felix, draws attention to small fraternal groups among the Yemenites, living under the headship of the eldest brother, and holding their property in common, 'All the kindred have their property in common, the eldest being lord'<sup>2</sup>.

Among nomads, private property in land is unknown<sup>3</sup>. The nomadic tribe is identified with a certain district, which it holds in common as its property as over against other tribal groups. Within the assigned limits, waters and pastures are common tribal property. All members of the tribe have common water rights, without which the right of pasture would be useless. An insufficient water supply and a consequent scantiness of pasture not infrequently oblige the tribe to divide itself into numerous small camps, dotted over the tribal territory. As the landed possessions of the nomadic tribe are common to the tribal group, every tribesman has an equal right to pitch his tent and drive his cattle where he will. But with the transition from the nomadic stage to an agricultural mode of life, the sense of identity with the soil contracts into the smaller tribal units, — the clan, sept, or family group, residing in the agricultural village. In fixed villages the inhabitants claim an exclusive right to the village lands, which are held by the villagers

1) Barton, *Semitic Origins*, 39, 267. 2) Book XVI, 4:25. 3) Palfrey states that the Indian tribes of North America had no conception of individual landownership. *History of New England* (1858), I, 36—38. This is true also of other races on the same level of culture.



collectively. Thus the old nomadic principle of common tribal ownership is narrowed down to the village community, holding its lands for the common benefit of all concerned. This permanent, regional grouping of the smaller tribal units gradually weakens the sense of tribal solidarity, and tribal affiliation is superseded by local connection. To one accustomed to tribal genealogies, like 'Umar I., this is most unfortunate. He cannot understand, why the farmers of 'Iraq, in designating their descent, should merely cite the name of some village, instead of giving their tribal connection. In answer to the question, *mimman anta*, 'to which people do you belong', they replied, 'to this or that village'. That it could be said of another group, 'their genealogies are their villages', would occasion equal dismay in the heart of every true son of the desert<sup>1</sup>.

But the transition from a nomadic, or even semi-nomadic, to a settled, agricultural life does not mean a complete break with the economic ideals of the past. Economically, there is a line of continuity even for tillers of the soil, with whom a certain security of tenure is indispensable, as illustrated by the village communities of Palestine. For example, the custom of holding village lands in common, distributed periodically by lot among the ploughmen, has persisted in many parts of Palestine down to modern times<sup>2</sup>. Many of these villages have been in possession of their common lands from time immemorial. Again, the prominence of the primary unit of organization in the nomadic practice of blood-revenge has its counterpart in the importance of the landtilling family group, residing in the village. Under the rules of tribal life the *wali*, or nearest kinsman, supported by his family group, takes the initiative in exacting vengeance for bloodshed, because he will ultimately share in the decedent's property<sup>3</sup>. So, under the new conditions of agriculture, the performance of the same function by the next-of-kin is prompted by similar motives. As in the days of the prophet

1) Nöldeke, *Zeitschrift der Deutschen Morgenländischen Gesellschaft*, XI, p. 183. 2) Neil, in *Jour. Trans. Vict. Inst.*, XXIV, 155 ff.; *P. E. F. Quarterly Statement*, 1891, pp. 105—106; 1894, pp. 191—199; 1906, pp. 192—197; Wilson, C. T., *Peasant Life in the Holy Land*, 189—190; Lees, *Village Life in Palestine*, 137—138; Macalister, *Civilization in Palestine*, 122. 3) Wellhausen, *Ehe*, 477.

of Anathoth<sup>1</sup>, so in the village communities of Palestine, prior rights of purchase may be exercised by the next-of-kin, or by any member of the kindred group. Similarly, the right of redemption constructively still exists. As a rule, the alienator of a piece of land is obliged to contract for his relations to desist from all their rights, no transaction being complete unless all the relatives of the seller have consented to the sale. To accomplish this is often a very difficult matter, especially in the case of minor relatives, who may not be of sufficient age to signify their will, or renounce their rights.

What we have said in the previous chapter regarding the choice of a village site and the structure of farmhouses, applies in a general way to the villages of Palestine. The location of many of these villages is practically identical with that of the towns and villages that have preceded them. They often bear the names of the old sites which they now occupy.

The houses<sup>2</sup> of the peasantry are not unlike those, which sheltered the peasants thousands of years ago. These fixed dwellings are owned, the right of permanent possession having been acquired as the reward of personal labor incidental to their erection<sup>3</sup>.

Doubtless there is a line of continuity, also, between the old clan notions of landed property and the collective ownership of arable and pasture lands by the members of the village community. The typical village, it will be remembered, was originally the settled abode of a group of related clansmen<sup>4</sup>. It is true in process of time others, who did not belong to the same clan, would, for one reason or another, become identified with such an agricultural community. But this would in nowise affect the principle of group ownership, with which every clansman would be more or less familiar, irrespective of his original group af-

1) Jer. 32:6—15. 2) For the structure of Palestinian farmhouses, see Jäger, *Das Bauernhaus in Palästina*; Wilson, *op. cit.*, 59—73. Three kind of dwellings are found in Arabia, viz., the tent in the northern part of Arabia and in the interior; the date-palm hut in South Arabia and along the coast; and the stone or mud-brick houses in the larger towns. 3) In all probability the notion of individual landownership was first applied to a man's homestead. Smith, *Rel. Sem.*, 95. 4) Cp. Ar. *ahl*, 'people,' 'clan;' Ass. *alu*, 'village,' 'town,' 'city;' Heb. *ohel*, 'tent,' 'dwelling.'

filiation. We have already seen that under tribal rule, the group may be the tribe or any of its subdivisions, — the clan, sept, or family group: in settled communities the group is the village. As in the period of tribalism every tribe protects with a strong hand its landed property against the encroachments of rival tribes, so now, the village clings tenaciously to its own lands as over against every other village, every village being, so to speak, an economic unit. Henceforth the village and not the individual villager is the unit of landholding. Individual proprietary rights to the village arable are only temporary. Such rights cease, when the farmer has gathered in his harvest for the year. The land cultivated by him that year will then revert to the common arable, only to be redistributed the following year among the village ploughmen collectively.

The method of redistribution naturally varies in accordance with the customs and usages of each community. In the un-walled villages of southern Palestine, where the peasants of each village hold in common all the land that lies around their village, varying in quantity from five thousand to six thousand English acres, the prospective cultivators assemble at ploughingtime in the village guest-house, or on the threshing floor<sup>1</sup>. Here they are met by a scribe, who writes down the names of the persons proposing to work the ground together with the number of ploughteams that each man intends to employ. As a rule, the farmers now form themselves into several groups often 'ploughs'<sup>2</sup> each, and the chosen representative of each group draws by lot one of the six sections of land previously parcelled out into six equal sections. Each section, composed of parcels carefully chosen from different parts of the communal land for the sake of equalizing the arable shares of all concerned, is again divided by measurement with an ox-goad, or rope, into ten equal strips. Once again, as in the case of the six major sections already mentioned, the name of each parcel is written, usually on small pebbles, which are then put into a bag. In order that there

1) Neil, *loc. cit* 2) Ar. *faddan*, plur. *jadadin*, 'plough,' 'yoke of oxen,' ploughteam.' As a land-measure *faddan*, sometimes rendered 'acre' is a variable quantity, depending upon the strength of the ploughteam and the quality of the soil. When thus used it represents the amount of land which a yoke of oxen can plough in a day.

may be no collusion, a very young child is called to take them out one by one, handing to each man in the group a pebble until all are supplied. If the land of a community is sufficient for the needs of all concerned, custom requires that each man's allotment shall be in proportion to the working strength of his ploughteam. But if the lands of a village are smaller in proportion to the number of available ploughteams, they are divided equally among all the ploughmen<sup>1</sup>. Burckhardt, in his description of the villages of the Hauran, states that where the village arable is more than ample for the needs of the villagers, 'every *fallah* occupies as much of it as he pleases'<sup>2</sup>.

With regard to the diversity of the method of redistribution, above alluded to, it will suffice to mention the method employed in a certain village on such occasions. "As soon as the number of would-be cultivators was known, the land was marked out in an equal number of portions, so as to give each an equivalent number of portions of good, bad, and indifferent soil. Each candidate brought with him a leaf of some tree or plant, and these leaves were stuck into a lump of clay. A man, not a candidate, but who knew the land well, was called in and given this lump of clay; he did not know who had brought the different leaves, and therefore was perforce impartial. Taking each leaf he said, Such-and-such portion to the owner of this', and so on till all was allotted"<sup>3</sup>.

Under this system of allotting the land a villager often finds himself, during the period of cultivation, with a large number of small strips, all separated from one another and interspersed with the fields of his neighbors. And yet, such is the tenacity of the peasants to their ancient customs that they will prefer their allotted portions, however inconveniently distributed and far apart from each other, to the permanent possession of a contiguous portion of land. When in 1872 the Turkish Government tried to compel the peasants to take out title-deeds for their lands in severalty, many of the villagers were unalterably opposed to such a change, because they preferred their method of communistic division to holding in fee simple.

1) *P. E., F Quarterly Statement*, 1894, p. 193.  
299. 3) Wilson, *loc. cit.*

2) *Travels in Arabia*,

The best that the government could do was to content itself in many cases with registering the names of the men of the village as joint-owners of the adjacent lands, instead of recording the name of each member of the village community as the permanent possessor of a definite portion of the soil. In some cases, especially among the poorer classes, the principle of personal landownership was so incomprehensible and vague, that some of the villagers denied owning any land whatsoever in order to avoid paying the cost of the deed, and thus were deprived of their lands; in others, they sold their right for a mere trifle. In some parts of the land bloody contests have been waged since the establishment of the legal deeds on account of the illegal action, real or presumed, of the new possessors.

In cultivating his strips a man having a normal ploughteam would do his own ploughing. Where two villagers have a ploughteam between them, the fields of each will be cultivated by them on alternate days. Burekhardt, writing on the villages of the Hauran, speaks of peasants cultivating their fields in common, 'The *fallahin* who own *fadadin* often cultivate one another's fields in company<sup>1</sup>. The importance and value of such a ploughteam to an agricultural community can best be illustrated by a story that is told of a man and his family, who came to a certain village with a yoke of oxen, and asked for a house and land, agreeing at the same time to plough and sow, and share all general expenses with the villagers. "Forthwith a villager, who owned only a house but no oxen, was turned out of his house and the stranger installed in his place. Naturally, the turned-out villager protested, as he had built the house with his own hands, but the council of elders would not listen, and only gave way when he promised to become a regular agriculturist. Having been allowed a few days in which to make his arrangements, the stranger received a new lot and had to build a house, which was done by the help of the whole village. The other man meanwhile set out to Ramleh on a market-day, and having purchased a yoke of oxen, drove them

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1) *Op. cit.*, 297. Sometimes small plots were given to widows and others, who could not afford the expense of buying and keeping animals, the ploughing and sowing being done with the help of loaned animals.



home. But before entering the village, he took away his turban and wrapped it well around the horns of the oxen. Being asked what this meant, he replied, that the ox was evidently the most respected person here, without the ox no home, and because of the ox he was permitted to live in his own house, therefore honor to whom honor is due, and the turban to the head of the family<sup>1</sup>!

A furrow of double width marks the division of one man's crop from that of his neighbor. But as this dividing furrow may become obliterated by heavy rains, a small heap of stones is placed at the end of the boundary lines. It is well to remember that the 'stones of the boundary' are only necessary for the crops and not for the lands, which change hands at regular intervals. For this very reason the removal of a neighbor's landmark is regarded as a heinous offense<sup>2</sup>. Surely, it will be no exaggeration to say that such notions of land tenure are communalistic rather than individualistic.

Till within recent years the old community of feeling persisted in the form of an ancient custom observed at the time of reaping. A corner of the field was left unreaped, and this, together with sheaves left on the ground by the reapers, went to the widows and the fatherless, to the poor and helpless, including strangers. In other words, the dependent members of the community, who had a right to share in the produce up to a certain limit, were not to be forgotten<sup>3</sup>.

A field cultivated one year would lie fallow the next. The fallow and waste lands of a village are utilized as public commons, such pasture lands being held in common by the villagers. Included in the common lands of the village are the adjacent forest lands. The threshing floor of the community is held as common property.

The regulation of the internal affairs of the village community devolves upon the elders, regularly chosen by the male inhabitants of the village to represent them in all matters pertaining to the general welfare of the community. Thus it was

1) *P. E. F. Quarterly Statement*, 1906, pp. 193—194. 2) Cp. Deut. 19:14.

3) Conder, *Tent Work in Palestine*, vol. 2, pp. 258—259; *P. E. F. Quarterly Statement*, 1894, p. 199; compare also Lev. 23:22; Deut. 23:4—25; 24:2 19—21.

their duty, before the War, to assume responsibility for the payment of a minimum tax of one tenth of the produce to the central government. But in addition to the unpopularity of political taxation<sup>1</sup> in general, the unscrupulous methods of the tax-farmer in his intermediary capacity between the central government and the local village, made the collection of this and other taxes a most unpleasant duty.

## Chapter VIII

### The Babylonian Village Community

The law of the jubilee, enacted originally in the interests of the Hebrew clan, or village community, has no parallel in Babylonia. It is a noteworthy fact, however, that some of the most important features of the institution are to be found in Babylonian literature.

As in Israel, so in Babylonia, religion is co-extensive with life. Indeed, Sumerio-Babylonian culture is dominated throughout by religion. We are therefore prepared to find that the ownership of landed property in ancient Babylonia is vested in the deity. Thus, in the religious literature of the First Dynasty, Bel honors Marduk, the patron deity of the city of Babylon, with the title of *bel matati*, 'lord of the lands', literally, 'owner of the lands'. The author of an old incantation tablet, addressing Marduk, says, 'Heaven and earth are thine'<sup>2</sup>, thus affording a striking analogy to the well-known dictum of Leviticus 25:23. During the struggle of the small city-states for local supremacy, and the consequent shifting of local supremacy from city to city in the political history which antedates the First Dynasty of Babylon, the local deity, in theory at least, owns the land of the city, and the inhabitants of the city are his tenants. The lessees of such property bring a tribute, or *rent*, to the temple erected by them in honor of the local deity to whom the tribute is due. This tribute is at an early date commuted to a temple-

1) Political taxation is unknown to the free tribes of the Arabian desert. Smith, *op. cit.*, 459—461. 2) IV R.<sup>2</sup>, 29, no. 1, lines 31—32.

tithe, payable either to the god or his representative, the priest, who functions at the local shrine as the mediator between the clansmen of the settled hamlet, village, or town, and the god on whom they depend. With a plurality of priests the chief priest, or *patesi*, becomes the regent of the community. As the hamlet or village enlarges into a town or city, the *patesi* would be raised to the dignity of a king. "In its first recognizable form the state was a city gathered about a temple, the center of worship. Each of the city-states of Babylonia had its god with whom its interests were identified"<sup>1</sup>. As the ultimate owner of the soil was not unmindful of the needs of any of his worshippers, the distressed farmer had the right to resort to the temple storehouse in order to borrow seed corn, or money to meet the expense of harvest labor. These gratuitous loans, or loans of accommodation, could be repaid without interest. The king, it will be noted, is simply the administrator and not the owner of temple property. Like other borrowers he must repay on equal terms all loans made by him from the temple storehouse.

The settlement of the Tigris-Euphrates valley by the Semitic tribes did not involve the immediate extinction of all traces of the tribal system. True, Semitic tribal custom assumes the character of city law. But it is to be borne in mind that town life, in earliest times, 'did not materially modify the communal clan life. Cities, whether in Babylonia or in Palestine were at first simply the fortified dwellings of clansmen'<sup>2</sup>. While the civilization of Babylonia gradually outgrew the tribal stage, vestiges of the old clan law remain.

In the Code of *Hammurapi* the tribal system has disappeared. Individual landownership is the rule, although subject to certain state dues and obligations. The infliction of a fine on a given district, or community, for an untraced murder<sup>3</sup>, and family solidarity in matters pertaining to family property<sup>4</sup>, amounting to a strict entail, are primitive features that remain as a legacy from the old communal clan law.

1) Goodspeed, *History of the Babylonians and Assyrians*, p. 80. 2) Barton, *op. cit.*, p. 31. Cp. Ass. *alu*, 'village,' 'town,' 'city,' Ar. *ahl*, 'clan.' 3) Cp. Deut. 21:1 ff. See also Smith, *The Prophet and his Problems*, p. 196. 4) Cuq, *Nouvelle Revue Historique De Droit*, vol. 30, pp. 731—732.

The permanent alienation of family property, in ancient Babylonia, was a serious matter. In the case of proposed sales, a number of consents and preëmptions had to be considered by the prospective purchaser. The institution of private property did not prevent the heirs-at-law, especially the children, who had withheld their consent, from annulling the sale. That the family<sup>1</sup> had a reversionary right to such alienated property, may be inferred from the oft-recurring phrase of Babylonian jurisprudence, 'In future A, and any of his heirs, will not institute legal proceedings to recover the property'<sup>2</sup>. This right of reversion finds abundant illustration in the right of redemption<sup>3</sup>, which might be exercised, pending a certain delay, by the members of the family, or even by the neighbors<sup>4</sup> of the vendor. To hinder the members of the family from recovering the alienated property by refunding the price of purchase, the Babylonians took care to insert in the contract a clause<sup>5</sup>, imposing a fine upon any heir of the vendor, who shall contest the purchaser's right to the property, or one endeavored to put the transaction under the protection of the gods by appending to the deed a series of anathemās and imprecations against anyone, attempting to reclaim such family property. Poebel thinks that the oath not to make claim in future to the property, which has been sold, most probably does not imply the renunciation to the right of redemption, but that it refers to the loss of the right to undo the contract as long as the purchaser and his family shall own the purchased property themselves.

For a glimpse of the practical workings of the tribal system in a less disguised form we naturally turn to the invasion and subsequent conquest of Babylonia by the Kassite hordes, who

1) The family, as the unit of society, is composed of husband and wife, their children, and adopted slaves. 'Connection with ancestors and posterity soon enlarged the family to a clan.' Johns, *Babylonian and Assyrian Laws, Contracts, and Letters*, p. 120. 2) Schorr, *Altbab. Rechtsurkunden*, pp. 249—274, 413ff.; Kohler und Ungnad; *Ass. Rechtsurkunden* pp. 91, 148ff.; 453—467. 3) Chiera, *Legal and Administrative Documents from Nippur* chiefly from the Dynasties of Isin and Larsa, pp. 58ff.; Poebel, *Babylonian Legal and Business Documents from the time of the First Dynasty of Babylon*, pp. 11—15. 4) Meissner, *Altbab. Privatrecht*, nos. 30—34; Cuq, *op. cit.*, vol. 32, p. 484. 5) For contracts dating from the First Dynasty of Babylon, compare Cuq, *op. cit.*, vol. 33, pp. 415—417.

descended in small bands from the mountains of Elam upon the Babylonian plain. Cultural retrogression is not infrequently the result of the immigration and assimilation of primitive peoples to the indigenous culture of the conquered territory<sup>1</sup>. Neo-Babylonian law, for example, although more elaborate in detail, has not passed much beyond the legal stage of the First Dynasty, which approximates the development of the old Greek and early medieval Teutonic law<sup>2</sup>. The progressive development of Babylonian jurisprudence, it will be remembered, was often interrupted by the influx of heterogeneous elements directly traceable to many different races, — Sumerians, Semites, Elamites, Kassites and others. Without a doubt these Kassites<sup>3</sup> left their impress upon the civilization of Babylonia by the retention of many of their tribal customs. By sheer force of numbers, combined with their unspoiled natural virility and vigor, they succeeded in establishing a Kassite dynasty, which ruled over the country for almost six hundred years (1760—1185 B. C.). As the legal tradition of a country is determined in part by its political history, it is highly improbable that all the family, clan, and tribal interests of the Kassite invaders soon found themselves completely merged in the new conditions of settlement without a long intervening process of absorption and of gradual assimilation.

In the Kassite period, tribal property exists by the side of individual landownership, as attested by the inscribed boundary stones of this period<sup>4</sup>. These *kudurru* inscriptions relate for the most part to lands purchased by the king, either from a tribe or a small town, and subsequently donated by him to members of the royal family and to those of his subjects, who deserved well of the state. To gain possession of such lands the king must treat with the tribe or its representatives, paying at the same time a suitable compensation to the tribe or town, to which the land belongs. Thus, in a deed of gift, attributed to Nazi-Marutash, son and successor of Kurigalzu, a public ser-

1) Cuq, vol. 30, p. 737.  
pp. 234—235.

2) *Society of Biblical Archaeology*, vol. 35,  
3) Eduard Meyer calls attention to the fact that the Kassites were at an early date brought under Aryan influence. *Geschichte des Altertums*, I, 2, p. 653.

4) Cuq, vol. 30, pp. 709 ff., 720 ff.



vant receives 206 *gur* of cultivated land belonging to the town of *Tur-Zagin* of the tribe of *Muqqut Gish-Kit*. The deed expressly states that the tribe has been duly compensated.

The invocation of the gods in deeds of gift by the king to private individuals indicates that the authority of the king as the head of the state did not suffice to assure respect for the right, which he confers upon the donee. He implores the gods 'whose names are mentioned on this stone to curse after an implacable fashion' anyone who shall contest the right of the donee to the alienated property. In this way one sought to protect himself against the reversionary right of the members of the tribal group. There can be no doubt that the right existed. King Melishihu's fear, for instance, that transactions involving tribal property might lack finality and be revoked, is a case in point. The king 'implores his successors not to follow the counsels of the governor of the district, or of the prefect of the tribe, who might urge them to restore to the tribe *Pir Shadu Rabu* the field which he wanted to grant' to his sons. In dispositions with individual title, regularly consented to, care is taken to insert in the deed a clause, prohibiting on pain of malediction any future litigation for recovery of the property, whether on the part of the members of the tribe, or of the prefect, who represents them. According to one of the documents<sup>1</sup>, the right of the donee is not to be contested by the members of the tribe, or by any future tribal functionary. Under ordinary circumstances even 'the neighbors' might reclaim such property. In a dispute about some land, which had been sold to the king, the defendant addresses himself to the prefect of the tribe and to the thirty-four neighbors<sup>2</sup>. A vestige of the neighbor's right of consent is found in the right of redemption, and there seems to have been no definite time-limit to its exercise.

It is not impossible that we have a trace of agrarian communities in paragraphs 53 and 54 of the Code. Paragraph 53 provides that the grain of a district, which has been destroyed by an inundation caused by neglect on the part of a neighbor, shall be restored to the district by the offender. Still more to

1) Peiser, *K. B.*, IV, 69.    2) *Kudurru* 14 of the Louvre.

the point, perhaps, is paragraph 54, which 'confers upon the clan of the district<sup>1</sup>, whose grain has been destroyed by the water, the right to share the price of the sale of the person and goods of the author of the damage, if he is unable to restore the grain, which has been lost by his fault. It seems that it is a question here of a collectivity, rather than a series, of individual rights'<sup>2</sup>. An old inscription, dating from the fourth millennium of our era, points to the existence of collective property in certain regions adjacent to Babylon. Originally, the work of irrigation, so essential to agricultural prosperity, devolved upon families grouped in tribes. To maintain dikes and to keep canals in a constant state of repair, required the combined efforts of the tribal group<sup>3</sup>. The irrigating canal, by the way, soon became a conspicuous feature of the Babylonian landscape, as illustrated by an ancient Babylonian map, made about 1500 B. C. by an engineer of the Kassite period. The network of intersecting canals formed in the eyes of the man who drew the map, a convenient skeleton of the plan, and gives to the whole the aspect of a chess-board<sup>4</sup>. Six small circles on the map contain the names of as many villages, one of the villages bearing the name, 'Hill of the Fifty Men'. We see how the peasants lived in villages, having common lands and public marshes. In the center of the map we note 'the field of the palace'. To the north of the royal estate we observe 'the field of Marduk', and to the south-east 'the field of the *baru* priest', either of which is much more extensive and more valuable than the landed possessions of the king himself. The extent of these temple lands may be a fair index of the importance of the *baru* priests, or priests of divination, who, by their liver omens, their oil omens, etc., endeavored to ascertain the course of future events.

As regards the location of these villages, we would observe that they are generally situated in close proximity to some canal. 'The Village of the Hill of the Fifty Men', located on the banks of the north-western extension of the principal canal, suggests that an eminence, in such an agricultural country, afforded a better village site than the low-lying marsh-lands. Unfortunately,

1) *mar ugare*. 2) Cuq, vol. 30, p. 734. 3) Ibid. 4) *Museum Journal of the University of Pennsylvania*, December 1916, pp. 263 ff.

the map throws no light on the location or the structure of farmhouses, although we learn elsewhere that both sunburnt bricks and wood were used in Babylonian building operations. Babylonian farmhouses, in all probability, were similar to those of Palestine<sup>1</sup>. These one-roomed clay huts, constructed of sun-dried bricks, or blocks of mud held together by chopped straw, naturally needed constant attention. The average house might have as accessories, a court, a barn, and sometimes a well. It rarely exceeded one storey in height.

There is strong presumptive evidence that agricultural land tenure in the rural villages of the Kassite period was subject to tribal rules and regulations. The fields and townlands, mentioned in the *kudurru* inscriptions, belonged to the arable lands of some tribe or township. Those purchased by the king consisted almost exclusively of cultivated fields, situated on the bank of a canal or a river. While the tribe or its authorized representatives might consent to sanction, in favor of the king or of one of his servitors, the transformation into private property of some of the landed property of the tribe, the bulk of the latter, it appears, was held and cultivated by the members of these tribal villages in accordance with the ordinary clan notions of property prevalent among the group. How did these Kassite tribesmen, who loved to roam at large, become metamorphosed into cultivators of the soil, dwelling in tribal villages? In general, it may be said, that "the tribe occupies the district over which it has jurisdiction. This district is divided into several smaller districts with a view to meet the needs of the various tribal subdivisions. The lands of such a smaller group are likewise parcelled out among a certain number of tribesmen, who are thenceforth regarded as the proprietors of the field. Some of the members of the tribe are found living in town and villages within the confines of the tribal territory"<sup>2</sup>. As already intimated, these tribal villagers did not immediately abandon their clan notions regarding the inalienability of the soil, for this, the necessary presuppositions are entirely lacking.

1) Vincent, *Canaan*, 65ff.; Macalister, *Gezer*, I, 167ff.; Handcock, *Archaeology of the Holy Land*, 124ff.; Jäger, *Das Bauernhaus in Palästina*, (2 *Soc. Leg. Prim. Sem.*, 182.

Though alienation\* to the profit of the king or of some public servant is met with, it is subordinated to the consent of the tribesmen or of their representatives. Proof of this is found in the persistence of the right of reversion, as evidenced by the attempts, which were made, to restore such alienated property to its original possessors. Whether or not we can be equally sure about the application of the right of reversion in the case of arable land which, under the pressure of necessity, might be transferred from one village to another, is less certain. Moreover, for the period under consideration, we cannot, for want of corroborative evidence, predicate with precision the occurrence of the custom of re-allotting arable lands among the villagers collectively. Boscawen believes to have discovered, in Babylonian literature, an instance of the periodical redistribution of land by a town council<sup>1</sup>. The same writer states that "a number of villages paid their tithe in a body and were taxed as if they paid individually".

That the village pasture-grounds were looked upon as common property by the villagers will occasion no surprise. In the Kassite period, as in almost every period of Babylonian history, pastoral pursuits were highly developed. Nevertheless, no one claims to buy or sell pastoral land. The nearest approach to it is a passing allusion in one of the *kudurru* inscriptions to the existence of some pasture-grounds by the side of some lands under cultivation. In Babylonian *ugaru*, 'meadows', 'commons'<sup>2</sup>, or in the fuller form, *ugar ali*, the common land of a village or town, we have a striking analogy to Hebrew *migrash*, or the common pasture lands of villages and towns.

The Kassite tribal group obeys a chief, prefect, *patesi*, or king. In like manner, the tribal village has its functionaries and administrators, such as judges, scribes, and elders. Of these the elders played the most prominent part in the internal affairs of the community. Thus, in a dispute about some townland, reclaimed by one of the neighbors of the donee, the king consults the prefect and the elders of Bagdad.

The *kudurru* inscriptions, then, point to the co-existence of private property with the property of the tribe. Sufficient

1) *Trans. Vict. Inst.*, XXIV, p. 185.

2) *Muss-Arnolt, Dictionary*, 15.

has perhaps been said as to the existence of the latter in the records of this period. Concrete instances of the former are found in private houses and in royal grants with individual title. With the elimination of the Kassite dynasty from the stage of Babylonian history, Kassite tribalism is merged in the individualizing process of Assyro-Babylonian commercialism, and finally lost in virtue of the unifying effect of its military policy. In Assyrian times, individual ownership is a well established principle. According to an agricultural census<sup>1</sup> of the seventh century B. C., the average cornland holding in the district of Harran comprised from twenty to twenty-four homers of land, and the average family is surprisingly small, when compared with the large families of a semi-nomadic community. All farms and vineyards are hereditary holdings, subject to the rules of individual proprietorship.

The subjects treated in the following chapters have to do with certain forms of communism in non-Semitic areas, derived apparently from the tribal arrangements of ancient times. We begin with the tribal villages of India.

## Chapter IX

### The Tribal Villages of India

From the laws of Manu it appears that the pasture lands of villages and towns were held in common property. 'On all sides of a village a space shall be reserved (for pasture<sup>2</sup>), six hundred feet (in breadth), and thrice (that space) round a town. If the cattle do damage to unfenced crops on that (common), the king shall not punish the herdsman . . . If a dispute has arisen between two villages concerning a boundary, the king shall settle

1) Johns, *An Assyrian Doomsday Book*, pp. 18ff. 2) The waste land of a village community is "that part of the village domain which is temporarily uncultivated, but which will some time or other be cultivated and merge in the arable mark. Doubtless it is valued for pasture, but it is more especially valued as potentially capable of tillage." Maine, *Village Communities*, 120—121.



the limits at a time when the landmarks are most distinctly visible!<sup>1</sup> Whether this passage relates to the collective holdings of a village community, as Maine<sup>2</sup> would suppose, or to the severalty village of Baden-Powell's researches<sup>3</sup>, is more or less conjectural, owing to a lack of historical evidence. However, undivided 'family' property there was, as is seen from a fragmentary document of the fourth century B. C., attributed to Nearchos, one of Alexander's generals. "In other parts (of India) the work of agriculture is carried on by each 'family' in common<sup>4</sup>; and when the crops have been gathered each person takes his share for his support during the year"<sup>5</sup>. The custom of joint inheritance among co-sharing family groups was a recognized institution in early Aryan society<sup>6</sup>. Such an institution, it will be superfluous to add, neither implies a uniformity of tenure throughout the vast continent of India, nor a common ownership for according to the traditions of India the arable land seems to have been already subject to individual proprietary rights. According to the laws of Manu, the preferential right of personal labor sufficed to establish title, 'The sages declare a field to belong to him who cleared away the timber'<sup>7</sup>.

Unfortunately, there are no direct means of establishing a line of continuity between the earlier and later forms of rural life. But we would venture the assertion that the tribal form of agrarian society in its modern manifestations is connected in some way with the tribal arrangements of ancient times, notwithstanding the supposed late origin of the tribal villages in the Panjab frontier districts<sup>8</sup>.

There is every reason to believe that the settlement of the major part of India was effected under the rules of tribal life. Although much that is distinctly tribal in character may have totally disappeared, the people of Upper India, and elsewhere, will frequently record themselves at a census as of such and

1) *The Laws of Manu*, in *Sacred Books of the East*, vol. XXIV, chap. VIII. 237, 238, 245. 2) *Op. cit.*, 104ff. 3) *The Origin and Growth of Village Communities in India*, 61, n. 2; 100, n. 1. 4) κατὰ συγγένειαν κοινῇ. 5) Strabo, XV, 1, 66. Cf. Coulanges, *The Origin of Property in Land*, 113—114; Lassen, *Indische Altertumskunde*, II, 727 (ed. 2). 6) Maine, *loc. cit.*; Baden-Powell, *op. cit.*, 114, 118. 7) chap. IX, 44. 8) Baden-Powell, *op. cit.*, 57—58, 72, 87—88, 104, 138.

such a tribe, the feeling of kindred being in nowise restricted to the family in its modern acceptation. Distinct terms are used for the tribe and its subdivisions<sup>1</sup>. Among the north-western frontier tribes, the tribal land<sup>2</sup> ordinarily consists of one great territory, portions of which are assigned to the several primary divisions or clans. "Of these there are three; and their territory s in three great contiguous blocks. Each such territory is made into large secondary sections called tappa. (The first contains two, the second two, and the third five). Ordinarily these tappa territories correspond to a group of descendants whose designation ends with the syllable-zai (which in the local language [Pashtu] means "son of"). The tappa is finally divided into a number of "companies" (or Khel). The Khel is a group usually much larger than a village<sup>3</sup>. In the course of time villages are formed, and separately demarcated"<sup>4</sup>.

The joint village of Northern or Upper India generally comprises a number of detached houses located within the arable and waste lands, which lie around it. Occasionally, the entire area is held in joint possession by the village group and managed as a joint estate<sup>5</sup>. More commonly, however, the arable land is divided and held in severalty.

The shares of arable land assigned to each cultivator were equal in quantity and quality, where the soil was uniform. Where of uneven quality, the land was divided into long strips of good, bad, and medium, and so distributed that the principle of equality was preserved. Sometimes the agricultural area is divided into 'plough lands'<sup>6</sup>, proportionate to the working strength of each family<sup>7</sup>.

1) In the north, for example, *qaum*, an Arabic loan-word, designates a tribe, while *gôt* signifies a clan. For other terms, see Baden-Powell, *The Indian Village Community*, 194. 2) "The whole area was divided out once (or gradually as required) into lots for all the tribesmen." Baden-Powell, *The Origin and Growth of Village Communities in India*, 89. 3) "In other places also, the whole of a large area is known to have been divided into shares for the households without definite village groups." \* *Ibid.*, *loc. cit.* 4) *Ibid.*, 24—25. 5) *Ibid.*, 16. 6) Called *hal*. "A plough is rather like an algebraical symbol to express a fixed share than a literal plough. The arable land then is divided into, say for instance, sixty-four ploughs, and every man's holding is expressed in ploughs: he may have one plough, or two ploughs, or a plough and a half, or three-quarters of a plough." Campbell, *Modern India*, 87. 7) Baden-Powell, *op. cit.*, 88, 93—94. Where

Instances are on record of a custom of periodical redistribution, or exchange of lots, among the north-west frontier tribal villages<sup>1</sup>. But the custom seems to have been gradually abandoned, especially when the amount of labor bestowed on the land in the way of improvements was such as to react on the current notions of land tenure<sup>2</sup>.

It is worthy of observation that the arable land apportioned to the several families is not, strictly speaking, subject to either will, to mortgage, or to sale. In many villages composed of co-sharing agnatic groups of kinsmen<sup>3</sup>, the custom of preëmption tends to keep the family domain intact<sup>4</sup>.

The adjacent waste area of the joint village, consisting of pasture and woodland, was undivided and held in common "because (until it is wanted for cultivation) its utility would be diminished by partition"<sup>5</sup>. Every person in full possession of the usual village rights had an indisputable right to the enjoyment of all such common lands.

Agricultural lands having been conceived of in early times as of the nature of Crown property, the collection of a crown rent, or land revenue, follows as a matter of course<sup>6</sup>. This land tax imposed by the Crown is said to have approximated one-fourth of the produce or its cash value. In more recent times the rate of assessment for the Panjab amounts to 1 s. 11 1/2 d

the cultivated area has been brought under irrigation, "the land is shared with reference to the proportion of labor and money which each village co-proprietor contributed to the (co-operative) well sinking."

1) *Ibid.*, 67, 87—88, 104—105. 2) So much of the ancient right remains, however, "that the members (of the village) may claim periodical remeasurements and re-adjustment of holdings and payments, to rectify the inequalities and alteration of boundaries which may gradually arise." Campbell, *op. cit.*, 88. 3) "As primogeniture is never observed in peasant or village estates, the shares are the fractions of the whole, which naturally follow from the principle of equal right in the same grade of descent or agnate male relationship. The 'family' together is regarded as a unit which is known to consist of sons, grandsons, and great-grandsons, each of whose proportional right depends on his birth and place in the table of descent." Baden-Powell, *op. cit.*, 76, 132. 4) *Ibid.*, 122, 143—144. The opposition to the adoption of outsiders into the agnatic group to the prejudice of customary heirs is very pronounced. *Ibid.*, 134, 136. 5) *Ibid.*, 118. 6) Smith, *Early History of India*, 123.

per cultivated acre, and 3 s. 6½ d for the North-Western Provinces<sup>1</sup>.

The unit of land administration in these provinces is the village and not the individual landholder, as may be seen from the fact that the Government treats with the former as a corporate body.

The joint village of Upper India was not originally governed by a hereditary headman, but by a council of village elders, acting as the representatives of the co-sharing householders in the management of the common affairs of the village<sup>2</sup>. As such a village constitutes a self-regulating community, the authorities seldom interfere in village matters unless the villagers disagree among themselves.

## Chapter X

### Homeric Land Tenure

The question of Homeric land tenure is a difficult one, owing to the fragmentary nature of the evidence<sup>3</sup>. In a simile of six lines the combatants on either side of the breastwork are compared to two men engaged in a boundary dispute at close range. "But as two men, with measuring-rods<sup>4</sup> in their hands, wrangle over boundaries in a common field<sup>5</sup>, striving for their right within scanty space: even so the breastworks held these (warriors) asunder, over which they rained down blows on the well-rounded ox-hide shields around each other's breasts"<sup>6</sup>. The

1) Hunter, *The Indian Empire*, 533. 2) Baden-Powell. *op. cit.*, 12ff., 19. There is also in each village an accountant, or registrar, and a boundary man. 3) Iliad XI, 67ff.; XVIII, 541ff.; XXI, 405; XXII, 489.

4) 'measures.' 5) ἐπιμέτρων ἐν ἀπορίῃ. Poehlmann's translation of the first two lines of our passage reads to the following effect:

Like two men striving on account of boundaries,

And with measures in their hands upon a common border of the field,' etc. Cf. *Die Feldgemeinschaft bei Homer*, in *Altertum und Gegenwart*, 117 But it is obvious that there is no valid reason for rejecting the rendering of most authorities. Cf. Pape, *H. W. B. d. griech. Sprache*, I, 967.

6) Iliad, XII, 421—426.

*oura* of our text are elsewhere referred to as stones marking off one plot of ground from the other<sup>1</sup>. Occasionally, a fraudulent neighbor attempted to encroach on his neighbor's holdings by removing the landmarks<sup>2</sup>. The best means of detecting the fraud was by remeasurement, after which the boundary stones could be restored to their proper place.

The above simile not only postulates the existence of 'common fields' but also points, in the direction of a common field system of agriculture. What that system implies can no longer be ascertained. While little is gained for our purpose by a perusal of the remaining passages, they at least suggest communal conditions<sup>3</sup>. We hear of many ploughmen driving their teams back and forth in a field triply ploughed after having lain fallow. "On it he made<sup>4</sup> a soft fallow, a rich sod, broad, thrice-ploughed; and many ploughmen, turning around their teams, drove them up and down. And when they had made the turn and touched the limit of the field, there came forth a man who placed into their hands a cup of honey-sweet wine; and then, behold, they turned (their ploughs)<sup>5</sup> and down the furrows (they went), eager to reach the limit of the deep fallow"<sup>6</sup>. Perhaps the fallow land was common ground cultivated simultaneously by all the members of the community<sup>7</sup>. Eventually, a portion of the common land is appropriated by the king. The land thus appropriated is called a *temenos*<sup>8</sup>. "On it he made a royal domain; and in it

1) Leaf, *The Iliad*, I, 554; cp. XXI, 405. 2) Cp. XXII, 459: "for others will take away his fields." So Pape, I, 333. Some would read: "for others shall remove the boundary stones of his fields" (and appropriate the latter). Autenrieth's *Homeric Dictionary*, 42. Leaf (*ad loc.*) proposes the following: for others 'shall remove the landmarks of his allotment in the common field.' But this interpretation is merely a conjecture as there is nothing to indicate that the passage refers to the orphan's share of the common field. 3) Compare the "mules' range" of Book X, 351: 'mules are far speedier than oxen in drawing the well-jointed plough through the deep fallow land;' *Odyssey*, VIII, 124: 'the range (furrow) of mules in fallow land' Another land measure used is the *tetragyon* (*Od.* XVIII, 374), or the space which a man with a yoke of strong oxen can plough in a day. 4) Lit., to put, place; then, to work, make, prepare. Pape, II, 1109f. (3rd ed.). 5) *Ibid.*, II 954. 6) XVIII, 541—547. 7) Leaf, *op. cit.*, II, 256; Blakeney, *The Iliad of Homer*, II, 197, n. 3. 8) The same term is employed for temple lands set apart for the god of a given locality.



were reapers reaping with sharp sickles in their hands. And here armfuls of corn were falling to earth, one after another, and here were binders binding them in sheaves. And silently, in their midst, upon the furrow stood a king, sceptre in hand, with joy in his heart. And apart, under an oak, were heralds preparing a feast"<sup>1</sup> for the hired laborers. Indeed, 'the god and the king were the first holders of private property in land, and there are no clear cases of the *temenos* being connected with other possessors than these'<sup>2</sup>. The transition from collective holdings to private property is evidently complete as soon as the appropriated space is enclosed by a hedge or some similar obstruction. "On it he made a fair vineyard, . . . heavy laden with clusters . . . And around it he drew a trench, and fenced it with a fence"<sup>3</sup>.

Ancient Greek law, it may be added, is strongly opposed to the permanent alienation of the family domain, either by bequest or as dower, property being conceived of not as an individual but as a family right. Plato says, "You cannot leave your property to whomsoever you please, because your property belongs to your family, that is, to your ancestors and your descendants"<sup>4</sup>. In certain parts of Greece, laws were enacted with a view to restrain the sale of land and to keep the original lots of land of equal size<sup>5</sup>.

## Chapter XI

### Roman *Ager Publicus*

At Rome, when our knowledge of its history commences, the gentile system is already undergoing a process of disintegration. There can be little doubt, however, "that a portion of the Roman territory, gradually augmented through new conquests,

1) XVIII; 550—559; cp. XI, 67 ff.      2) Keller, A. G., *Homeric Society*, 193—194.      3) XVIII, 561—565. See Matt. 21:33.      4) *Laws.*, XI.  
5) Aristotle, *Pol.*, 2:7, 9.

was early reserved by the state<sup>1</sup> as *ager publicus*<sup>2</sup>; that is sufficiently attested by the complaints made for centuries by the plebeians of its monopolization by the patricians"<sup>3</sup>. Virgil describes a time "when the soil was neither divided nor marked out by boundaries, and when everything was common"<sup>4</sup>. But on the whole it may be said that the institution of private property is on the ascendant at a very early period. "The Roman nation was one of the first to substitute individual for family property. They made use of bequest and sale from an early date. Roman law did, indeed, retain some traces of the early rights of the family; but what really characterizes it is that it brought about the triumph of the system of individual ownership"<sup>5</sup>.

## Chapter XII

### Russian Village Communities

The village communities of the Russian Slavs have preserved, more than any of their European neighbors, the ancient characteristics of land tenure. This is in part explained by Russia's geographical and political isolation. In a region of vast plains sparsely populated there is no immediate necessity for enclosing a parcel of ground with a fence or for dividing the land into regular lots. Thus, in some of the Russian colonies in Siberia each head of a family may till as much land as he can conveniently manage<sup>6</sup>. So, in south-eastern Russia, among the Cossacks of the Ural, who have kept intact the ancient Russian manners and customs, the land was so plentiful for a time that large portions of it were not even so much as allotted to the separate villages. The land was regarded as common property. According to Haxthausen, who visited Russia in 1842, the average

1) Modern scholars are agreed that the ancient Romans were subjected to the government of a king (*rex*) with a council of elders (*senatus*) and an assembly of burghers (*comitia curiata*).<sup>2</sup> 2) Cp. Coulanges, *The Origin of Property in Land* 105—106. 3) Goudy, in *Enc. Brit.*, sub Roman Law. 4) *Georgics*, I. 125. 5) Coulanges, *loc. cit.* 6) Leroy-Beaulieu, *The Empire of the Tsars and the Russians*, I, 483.

Cossack village, called *stanitsa*, contained from one to two hundred houses. "These Cossacks pursue agriculture but little . . . They live chiefly by breeding cattle and fishing . . . There is no private occupancy of the soil; on an area of seven hundred to eight hundred versts<sup>1</sup> and among fifty thousand people, all property is in common . . . Not only have individuals no private possession, but the villages even have no meadows allotted to them, these having always remained in the joint possession of the whole commune"<sup>2</sup>. Thirty years later, Wallace tells us that among the Cossacks of the Don periodical re-allotments were introduced at a comparatively late period, in order to meet the needs of an increasing population. The mode of distribution varies, of course, in the different Cossack villages. In a certain *stanitsa* "the whole of the arable land, with the exception of a portion reserved for minors, has been divided into a number of lots corresponding to the number of males, who have attained the age of seventeen. The arrangement has been made for a term of six years. Those who attain the age of seventeen during that period, receive a portion of the land held in reserve. Widows receive an amount proportionate to the number of their young children: those who have less than three receive half a share; those who have three, receive a full share; and those, who have more than three receive two shares. Each member, as soon as he receives his share, is free to do with it as he pleases; one cultivates it himself, another lets it for a yearly sum, and a third gives it to a neighbor on condition of receiving a certain portion of the produce. Some of the richer families cultivate a considerable area, for there are always many members willing to sell the usufruct of their portions. A family may buy a number of shares for the whole term before the distribution takes place, and receive all the shares in one lot. In consequence of this practice, there are still a number of members who are practically landless; but they have no ground for complaint, for they voluntarily sold their right, and they will be duly re-instated at the next general redistribution"<sup>3</sup>.

<sup>1</sup> 1) A verst measures 1166.6 yards.      2) *The Russian Empire*, II, 235, 239-240.      3) Wallace, *Russia*, 363.

In Great Russia collective property is the rule, while in Western Russia, less shut off from European influences<sup>1</sup>, individual tenure predominates.

The Russian *mir*<sup>2</sup>, or peasant commune, formerly covering extensive tracts of land, is now generally limited to the arable lands and meadows attached to a village. The latter, sometimes approximating several thousand inhabitants, usually includes a number of related families with patriarchal rule<sup>3</sup>, held together by common interests. The space occupied by the village houses, standing on both sides of a rather wide street as well as the vegetable gardens, or enclosures, immediately surrounding the log-houses were the hereditary property of the family. For this reason the *dvor*, or enclosure, is never affected by periodical redistributions.

The affairs of the village are administered by a council of family elders presided over by a kind of mayor, called *starosta*<sup>4</sup>. One of the most important functions of the village council is to divide the communal land among the villagers, and to fix the day for commencing the ploughing of the fallow field.

Under the prevailing system of division, the whole of the arable land is divided into three large zones or fields in conformity with the triennial rotation of crops. The practice of triennial rotation merely implies that the first field will be set aside for rye, the second for oats and buckwheat, and the third for pasture. In other words, a field reserved one year for raising winter grain and summer grain the next, will lie fallow the third year.

Each of the three fields is subdivided by means of simple measuring-rods into long parallel strips of equal value. Lots are drawn for the several subdivisions and assigned to the villagers

1) Poland and Sweden. 2) (1) commune; (2) universe, world, Cp. Greek *cosmos*. The *mir* is a small world of its own (microcosm).

3) Paternal authority in the household has its counterpart in the tsar of the Russian nation, the authority of each being well-nigh absolute in his respective sphere. The father's rule is based on reverence for age and religious feeling. 4) Ten or more villages inhabited by two thousand adult males constituted a district, called *volost*, with a district council composed of the elders of the communes, one of whom was chosen president (*starshina*).

in proportion to the number of claimants entitled to a share of the village lands. By a share we mean one or more strips in each field. The size of a share depends on the unit of distribution obtaining in a given village. Thus, lands may be allotted according to the number of taxable male inhabitants inscribed in the last census list<sup>1</sup>, or according to the working power of the different households<sup>2</sup> and the amount of taxes<sup>3</sup> that each can afford to pay.

The agricultural lands are subject to redivisions at more or less regular intervals. In some villages the arable land is divided annually<sup>4</sup>, in others every three years, that is, in accordance with the practice of triennial rotation. In other regions the period of redistribution is extended to six, nine, ten, and twelve years. As a protection against frequent redivisions in the event of a material increase in the population, many communities reserve certain lands, for which they have no immediate use other than as grazing-ground for cattle<sup>5</sup>. But where such lands are no longer available, frequent periodical re-allotments must be resorted to, in order to equalize the shares as much as possible<sup>6</sup>.

Annual and even semi-annual re-allotments prevail in the case of meadow-lands. Divided into the requisite number of portions like the cultivated lands, they are distributed among the heads of families by casting lots. At a specified time each family proceeds to mow the portion allotted to it. In some districts the meadow is mown by all the villagers in common, the hay being afterwards distributed by lot among the several households<sup>7</sup>.

The origin and antiquity of the Russian village communities is a mooted question. Some would hold with Chicherin that

1) *Dusha*, 'soul', or 'revision soul.' 2) *Tiaglo*, signifying a 'burden,' 'dues,' 'contribution,' Viewed in a technical sense, this term serves to designate the unit of agricultural labor furnished by each household, viz. a man, a woman, and a horse. 3) The taxes levied on lands in Russia often exceed the normal income from the land. Their collection falls to the lot of the communal tax-collector. 4) So in the Governments of Saratof, Oriol, Kaluga, Voronej, etc. 5) The pasture lands "are nearly always used in common, each family sending out their cattle, usually marked, under the care of a herdsman hired by the commune." Leroy-Beaulieu, *op. cit.*, 510. 6) *Ibid.*, 511f. 7) Wallace, *op. cit.*, 136.



the Russian *mir* dates from the capitation tax imposed by Peter the Great in the year 1719. It is claimed that the principle of equal taxation led to an equalization of the property taxed, thus preparing the way for communal land tenure with periodical re-allotments. The Russian village community, therefore, would be nothing more than a creation of the state in an age of serfdom. According to this view, the institution did not acquire its final form until 1781, at which time periodical redistributions were declared legal. Professor Bielaev of the University of Moscow and others, however, maintain that "the Russian rural commune was an aboriginal phenomenon of Russian life, and that the principles upon which the communal associations of modern days were founded, had been in operation since the earliest period of Russia's historical existence —, since, indeed, a period previous to the coming of the Rurik"<sup>1</sup>.

Obviously, the major part of the discussion gathers around the custom of periodical re-allotments. Without pretending to settle the debate one way or the other, "care should be taken to discriminate between collective property and the custom of re-allotments"<sup>2</sup>. The absence of the latter in the older Russian documents does not seriously militate against the existence of the former, especially in the nomadic or pastoral stage, not to speak of an early agricultural stage, in which the population is small and the land more than ample for the needs of all concerned.

## Chapter XIII

### The German Mark System

As regards the earliest form of landholding among the Germans we have but a few references which it will be well to quote in full for the sake of clearness. To begin with, Caesar tells us that in the year 55 B. C. the Usipetes and Tencteri crossed the Rhine with a great mass of men, and took up their abode in Gaul on account of the warlike Suebi, who were

1) Kluchevsky, V. O., *A History of Russia*, II, 206 (translated by Ho-garth). 2) Leroy-Beaulieu, *op. cit.*, 481.

constantly hindering them from the pursuits of agriculture. "The tribe<sup>1</sup> of the Suebi is by far the largest and the most warlike (tribe) of all the Germans. They are said to possess a hundred cantons, from each of which they yearly send from their territories for the purpose of war a thousand armed men. The others who remain at home maintain both themselves and those engaged in the expedition; the latter again, in their turn, are in arms the year after, the former remaining at home. Thus neither agriculture nor the art and practice of war are neglected. But among them private and separate (arable) lands do not exist<sup>2</sup>; nor are they permitted to remain more than one year in one place for the purpose of residence. They do not live much on grain, but subsist for the most part on milk and flesh, and are much engaged in hunting"<sup>3</sup>. On a rudimentary stage of agriculture the soil soon becomes exhausted. This readily accounts for the temporary occupation of arable land. What especially strikes us in reading the passage is the absence of private property. Whether it tacitly assumes the onetime existence of community of land among the Suebi would be a possible alternative. However, we are in no position to follow up the suggestion any further<sup>4</sup>. Speaking of the Germans, Caesar says: "They do not pay much attention to agriculture, the greater portion of their food consisting of milk, cheese, and flesh. And no one has a fixed quantity of land or his own boundaries; but each year the magistrates and chiefs apportion to the tribes and clans, who have united together, as much land, and in such situations, as they think proper, and the following year they compel them to remove elsewhere<sup>5</sup>. For this practice they

1) *gens*. 2) *Sed privati ac separati agri apud eos nihil est*: mais aussi il n'y a chez eux ni propriétés privées ni champs limites. Fustel de Coulanges, *Recherches sur quelques Problèmes D'Histoire*, 258. 3) *De Bello Gallico*, IV, 1. 4) Fustel de Coulanges believes that Caesar has in mind a warlike group of Suebi dwelling near the Rhine, and not the entire Suebian tribe, owing to the fact that the Semnones were distributed into a hundred cantons in the days of Tacitus (*Germania* 39). The *centum pagi* presumably designate a special military organism, corresponding to a particular mode of possessing the soil. *Op. cit.*, 258—260. 5) (*Germani*) *agri culturae non student, maiorque pars victus eorum in lacte, caseo, carne consistit. Neque quisquam agri modum certum aut fines habet proprios, sed magistratus ac principes in annos singulos gentibus cognationibusque hominum, qui*

advance many reasons: lest seduced by long-continued residence<sup>1</sup>, they may exchange their ardor in the waging of war for agriculture; lest they may be anxious to acquire extensive lands<sup>2</sup>; and the more powerful drive the weaker from their possessions; lest they construct their houses with too much care in order to avoid cold and heat; lest the desire of wealth spring up, from which cause divisions and discords arise; so that they may keep the common people in a contented state of mind, when each sees his own means put on an equality with those of the most powerful"<sup>3</sup>. The absence of fixed boundaries is sometimes explained as a case rather of undivided than common property<sup>4</sup>. But even Fustel de Coulanges admits that Caesar's description savors of agrarian communism held in check by the despotism of public authority<sup>5</sup>. According to the French historian, the chiefs of the cantons arbitrarily dispose of the soil of which they alone appear to be the owners. The people themselves "have no rights, no power of initiative; the chiefs leave them only as much land as they think fit, and where they think fit"<sup>6</sup>. It is more likely, however, that this shifting occupation of the land from one season to another proceeded from military and economic considerations. Emphasizing the need of military discipline and a readiness for war, the cantonal chiefs naturally insisted on the removal of the people from place to place, in order to overcome the disadvantages of habitual employment in husbandry. The rapid exhaustion of large tracts of virgin soil due to the crudeness of the agricultural method, would favor such a policy. That this policy could have been enforced, in virtue of a right of ownership vested in the cantonal chiefs, lacks substantiation. Caesar remarks that "when a state either repels war waged against it, or wages it against another, magistrates are chosen to preside over that war with such authority, that they have power over life and death. In peace there is no common magistrate, but the chiefs of provinces and cantons administer justice and determine controversies among their own people"<sup>7</sup>.

*una coierunt, quantum et quo loco visum est agri attribuunt, atque anno post alio transire cogunt.*

1) *consuetudine*. 'custom.'

2) *finis*, 'boundaries.'

3) VI, 22.

4) Ross, D. W., *The Early History of Land-Holding among the Germans*, 17.

5) *Op. cit.*, 290.

6) *The Origin of Property in Land*, 5.

7) VI, 23.

And Tacitus further informs us that it is in the general assemblies of the people that chiefs are elected to act as magistrates in the several cantons of the state<sup>1</sup>. These functionaries act in a representative capacity, the idea of ownership being entirely absent.

Returning to the mode of land tenure among the Germans, Tacitus, writing nearly a century and a half after Caesar, observes that agricultural "lands are cultivated by all alternately in proportion to the number of cultivators; and are afterwards divided among them (all) according to rank<sup>2</sup>, the open aspect of the plain facilitating this partition. They shift<sup>3</sup> the arable lands each year and there still remains (uncultivated) land; nor do they attempt to make the most of the fertility and abundance of the soil by planting orchards, inclosing meadows, and watering gardens, corn being the only product required from the earth"<sup>4</sup>. Tacitus here describes the agricultural method employed by the Germans. Whether or not they were acquainted with the system of private ownership can neither be affirmed nor denied on the strength of the evidence. We look in vain for any definite statement concerning it. And yet it is unlikely that property in land was altogether unknown. "They dwell scattered and separate just as a spring, a field, or a forest attracts them. Their villages are laid out, not like ours in rows of adjoining buildings; (but) every one surrounds his house with a vacant space<sup>5</sup>, either by way of security against fire, or through ignorance of the art of building"<sup>6</sup>. Even the slave, it seems, dwells in a house of his own. The cultivation of the soil by serfs<sup>7</sup> and slaves<sup>8</sup>, however,

1) *Eliguntur in iisdem conciliis et principes qui jura per pagos vicosque reddunt.* *Germania*, XII. Of the Germanic tribes settling in German territory some were under a regal government, others under a republican form of government; the latter had chiefs, the former kings. 2) *pro rata*, or in proportion. 3) "*Mutare* does not mean to exchange among themselves; to express that meaning *inter se* would have been needed; *mutare* by itself is the frequentative of *movere*, and means to shift." *The Origin of Property in Land*, 10, n. 1. 4) *Germania*, XXVI. 5) *Colunt discreti ac diversi, ut fons, ut campus, ut nemus placuit. Vicos locant non in nostrum morem connexis et cohaerentibus aedificiis; suam quisque domum spatiis circumdat.* 6) *Germania*, XVI. 7) *Servis . . . frumenti modum dominus aut pecoris aut vestis, ut colono, injungit; et servus hactenus paret.* Tacitus, *op. cit.*, XXV. 8) *Fortissimus quisque ac bellicosissimus nihil agens, delegata domus et penatium et agrorum cura feminis senibusque et infirmissimo cuique ex familia: ipsi hebet.* *Ibid.*, XV.

does not affect Caesar's statement concerning the Suebi<sup>1</sup>. It must be borne in mind that among the latter the soil was tilled by warriors, and not by slaves. And besides, Tacitus does not say that all agricultural work devolved upon slaves. Therefore, so far as the evidence goes, there is still room in the economic life of the early Germans for cultivating groups composed of free men<sup>2</sup>.

Settlements of free men occur in the *Lex Sālica* of the sixth century<sup>3</sup>. The *villa* mentioned in section XLV of the code, relates to a village settlement inhabited by a number of cultivators, any one of whom may prevent the permanent location of every newcomer on territory, which is necessary to the subsistence of one or more villagers<sup>4</sup>.

As to the rules of succession obtaining at this period, it may be noted in passing, that sons alone succeed to the land of the deceased, daughters being excluded from the right of inheritance<sup>5</sup>. In an edict of Chilperic, however, we find that 'if either sons or daughters survive a man having neighbors, the sons shall possess the land as long as they live, in accordance with the regulations of the Salic law. And if the sons should suddenly die, the daughter shall obtain the plot of ground in a similar manner, like the sons, if they were still alive. But if she dies<sup>6</sup> — and another brother remains, the brother shall obtain the plot of ground, and not the neighbors<sup>7</sup>. And if the brother dies without leaving a descendant, then the sister shall possess the land'<sup>8</sup>. The mention of *vicini*, or neighbors, in this

1) *De Bello Gallico*, IV, 1. 2) *Contra Coulanges, The Origin of Property in Land*, 52; cp. Grupp, *Kultur der alten Kelten und Germanen*, 208, n. 2. 3) Blumenstok, A. H., *Entstehung des deutschen Immobiliareigenthums* 220, 223, 228, 262. 4) *Ibid.*, 250f., 282f., 301f., 359, 363. 5) *Lex Sālica*, LIX. Tacitus declares that the Germans were not acquainted with testamentary succession, the right of inheritance being confined in the first instance to the natural heirs. In default of children, the inheritance went to the brothers, to the paternal uncles, and to the maternal uncles in the order named. *Germania*, XX: *heredes tamen successoresque sui cuique liberi et nullum testamentum. Si liberi non sunt, proximus gradus in possessione fratres patrum avunculi*. Tacitus, it will be observed, makes no mention of the sisters of the deceased. Cp. Brunner, *Deutsche Rechtsgeschichte* (1906), 106f. 6) But if 'he' dies. So Blumenstok, *op. cit.*, 292, 7) *vicini*. 8) *Si quicumque vicinos habens aut filios aut filias post obitum suum superstitus fuerit, quamdiu filii advinxerint, terram habeant, sicut et Lex*



connection has given rise to the supposition that brothers did not originally inherit from each other, but that the landed possessions of the defunct reverted to the 'neighbors' in the broader sense of the term<sup>1</sup>. Why neighbors should be mentioned at all remains unintelligible, unless we assume that they once had an eventual right to the inheritance of a man dying without male issue.

This brings us to the mark<sup>2</sup> system. From documents belonging to the early centuries of the middle ages, it is clear that the original meaning of the word was boundary. Thus in the Ripuarian law the *marca* refers to a common boundary<sup>3</sup> between two properties<sup>4</sup>. But it might also be common to the estates of more than two persons<sup>5</sup>. Two or more neighboring land-owners, having a common boundary are called *comarcani*<sup>6</sup> or *marcomanni*. The latter may either denote 'men of the border', or 'men of the wood'<sup>7</sup>.

The equation of the mark with a frontier represents an extension of the boundary to a given territory<sup>8</sup>. At a subsequent period the word is applied to clearings in the forest areas, and finally to a tract of land held in common by a village community.

In scanning the early records we notice that the mark is frequently conterminous with lands in an uncultivated state. Especially is this true of appendages to property, such as forests<sup>9</sup>. For example, the *marca silvatica* belongs to the possessions of a Count Hugo in the villa of Brunno<sup>10</sup>. But the peculiar feature

*Salica habet. Et si subito filios defuncti fuerint, filia simili modo accipiant (accipiat) terras ipsas, sicut et filii si vivi fuissent aut habuissent. Et si moritur, frater alter superstites fuerit, frater terras accipiant (accipiat), non vicini. Et subito frater moriens frater non derelinquerit superstitem, tum soror ad terra ipsa accedat possidenda.. Edictum Chilperici, § 3.*

1) Blumenstok, *op. cit.*, 294, 299, 301—302, 369f. 2) O. H. G. *marka*, O. E. *mearc*, Du, *merk*, Lat. *margo*, Sanskrit *marga*, 'trace', Pers. *marz*. 'boundary. Kluge, *Etymol. W.B.*, 259f. 3) Among the objects used to indicate a boundary are perforated stones, little mounds of earth (graves), rude marks cut into trees, etc. 4) Coulanges, *op. cit.*, 117. 5) Ross, *op. cit.*, n. 49. 6) *Commarcani*, *Lex Baiuvariorum*, XII, 8. 7) Grimm, *Grenzaltertümer, Kleinere Schriften*, II, 33. 8) Coulanges, *op. cit.*, 13. The term survives in the Mark of Brandenburg and in other principalities. 9) Cp. Maurer, *Markenverfassung*, 35; *Dorfverfassung*, 49. 10) *Quidquid de rebus propriis habere videbatur in villa Brunnon et tres partes de illa marca silvatica, portione videlicet sua. Codex Lauresh*, No. 69, p. 74.

about the forests of this period is that they are sometimes held in common by a given number of persons. The expression *silva communis*, or common forest, occurs in a document of the eighth century. It relates to a forest reserved in part for the proprietor's use, and in part for the common use of the tenants<sup>1</sup>. So, again, in a document of the year 1150 we read of a forest held in common by three land-owners and their tenants: "this forest, called in the vulgar tongue *almend*<sup>2</sup>, is frequented by the peasants, and is used in common by them and us"<sup>3</sup>. Another deed of the twelfth century speaks of common tenure: "In this forest none of us had anything of his own, but it was common to all the inhabitants of our villa"<sup>4</sup>.

Common use in the forest implies the right of cutting wood for fuel and building purposes, as well as the privilege of acorning, or the right of sending pigs into the forest to feed on the acorns. Such rights of enjoyment were unlimited, as long as there was more than enough wood for everybody in the mark. Unlimited enjoyment in the forest lands of Bavaria continued until the sixteenth century<sup>5</sup>. Common forest rights survived in other parts of Germany as late as the eighteenth century<sup>6</sup>. It is interesting to note that according to the statistics of 1860 large areas of forest lands were still regarded as the common property of certain communities. The district of Coblenz may be instanced with an average of fifty eight per cent., while the communal forests of Prussia averaged but thirteen per cent<sup>7</sup>.

1) Coulanges, *op. cit.*, 45. 2) Ross derives the word *almend* (*allmende*, *allmeinde*, *allmeine*, *allgmoin*) from the Celtic *al*, 'fodder', and from either *main*, *maine*, 'estate', 'property', or *min*, 'land', 'field', 'plain'. *Op. cit.*, 138. Others associate the term with *allgemeine*, 'universal', 'common'. Owing to the common rights of the villagers in the *almend* (O. H. G. *alagimeinida*, *Allgemeinheit*, Kluge, *op. cit.*, 10; *alagimannida*, *Gesamtheit der freien Männer*, Grimm, *W.B.*, I, 237), the whole settlement is called a *Gemeinde*, or community (*communitas*). 3) *Silvae quoque adjacentis eidem fundo, quae vulgari lingua almenda nominatur, quam rustici frequentant, quae juris nostri sicut et illorum esse dinoscitur communione ad omnem utilitatem.* Wurdwein, *Nova subsidia diplomatica*, XII, 88. 4) *In hac silva nullus nostrum privatum habebat quidquid, sed communiter pertinebat ad omnes villae nostrae incolae.* Bodmann, *Rheingauische Alterthümer*, I, 453. 5) Maurer, *Dorfverfassung*, 214. 6) *Ibid.*, 215. 7) Lamprecht, *Deutsches Wirtschaftsleben im Mittelalter*, I, 81.

Rules and regulations governing the use of common forests, make their appearance at a comparatively early date. As time went on, wood naturally became more scarce. A document of the year 1302 prohibits any further destruction and devastation of forest lands<sup>1</sup>. The right of cutting wood in the common forest was often subject to the approval of the village authorities. In many communal villages of the fifteenth century the several householders might cut wood under the direction of an overseer on special days set apart for the purpose<sup>2</sup>.

The rural settlements of Germany in the fifteenth and succeeding centuries present a great variety of forms for the different districts. On the plateaus of the south and in the so-called North German 'flats' we meet with large compact villages. The villages in the vicinity of the Rhine as well as those of the western forest lands furnish good examples of the hamlet type. In other districts, such as Westphalia, manor houses and villages are found side by side with one another<sup>3</sup>.

The typical village community consists of a number of enclosed homesteads, located in the center of the arable mark<sup>4</sup>. Every mark-man is entitled to a share in the lands of the community, provided he is a resident in the village and has a house of his own.

The lands of the mark were generally divided into three portions, — forest, meadow, and arable. In view of our previous remarks on the usufructuary right in forest lands, it will suffice to give a brief sketch of the meadow and arable lands.

The common enjoyment of the meadows by a group of peasants bears much resemblance to the forest rights just described. In a document of the year 1279 the meadows are spoken of as belonging to the *almend* of the community<sup>5</sup>. When used as pasture by a village community, the *prata communia*<sup>6</sup> also came under the category of the *almend*<sup>7</sup>. In early times each man

1) Maurer, *op. cit.*, 215. 2) Janssen, *History of the German People at the close of the Middle Ages*, I, 322. 3) *Ibid.*, 320. 4) Maurer, *op. cit.* 20f.

5) *Prata spectans ad almendam nostrae communitatis*. Wurdwein, *Nova subsidia*, XII, 218. The ownership of the *almend* at this period is vested in villages and communes.

6) 'Communal meadows' were not seldom, even in the nineteenth century (1836). Lamprecht, *op. cit.*, 399, n. 1.

7) *Contulerunt pascua communitatis quae vulgariter almeina vocantur*. Guden, *Codex dipl.*, III, 1102.

turned out as many animals as he wished<sup>1</sup>. The communal herdsman then took charge of the animals previously marked by their respective owners<sup>2</sup>. The right of pasturage was subsequently regulated by strict proportion.

If flocks and herds are to be maintained throughout the winter months, steps must be taken to gather in the grass crop. As the meadow-land could only be utilized as pasture from the hay harvest till the following spring, the cattle had to be driven out in the early part of the year in order to save the grass. The meadow was then separated from the common pasture ground by an enclosure, and divided into sections. For the purpose of equalizing the shares of the several claimants, these sections were subdivided into smaller lots, one or more portions from each section being allotted to every mark-man at the annual convocation, or *markmoot*<sup>3</sup>. Each man housed his own crop. The removal of the fences was a matter of common concern. By this process the meadow became again common pasture, to which it had originally belonged. In many cases the grass land was shifted every year from one part of the mark to another. Later, when the location of the grass lots became more permanent, redistributions by lot gave way to the rotation system. The man, for instance, who held lot I in any given year would take lot II the next year, the holder of lot II meanwhile taking lot III, and so on.

The above description of the field-grass system of tillage, called *Feldgraswirtschaft*, more or less applies to the cultivation of the arable land. The whole area is first divided into several rectangular sections of variable extent and quality. The number of shareholders determined, these sections, or *Gewannen*, are again divided by the villagers into a corresponding number of long narrow strips<sup>4</sup>. That done, each

1) Maurer, *Markenverfassung*, 142f., cp. Blumenstok, *op. cit.*, 237f., 281f. 2) Maurer, *Dorfverfassung*, 253—258. 3) For additional methods relating to the disposition of the grass crop, see Ross, *op. cit.*, 9, 84f., 141, n. 21. 4) The instrument used in measuring off the allotments was a cord or rope of some sort (Lat. *funiculus*, Ger. *reß*), later replaced by the Teutonic rod (*virga teutonialis*). Ross, *op. cit.*, 132—133. But there is evidence to show that the foot constitutes the basis of all measures of length. To quote from a document of the year 1456: 'any one requested to make a measuring rope shall measure a hundred and three feet in

share<sup>1</sup> consisting of one or more parallel strips<sup>2</sup> in each section<sup>3</sup>, is assigned by lot, every mark-man receiving an equal or proportionate share<sup>4</sup>.

In cultivating his allotment the villager must conform to certain rules, binding upon every member of the community. He must act in unison with his neighbors, as illustrated by the rotation of crops. With a division of the arable into two, three, or even six sections, the practice of rotation would vary accordingly. Of these the three-field system predominated<sup>5</sup>. By triennial rotation we simply mean a definite succession of crops for the three fields under cultivation. Or to repeat a similar statement made elsewhere, a field on which winter grain is raised one year and summer grain the next, will be permitted to lie fallow in the year following; hence expressions like 'winter field', 'summer field', and 'fallow field'.

Maurer speaks of annual re-allotments in the seventeenth and eighteenth centuries<sup>6</sup>. Reassignments of land at stated intervals, varying from three to twenty years are met with in the nineteenth century. But the custom gradually disappeared in numberless instances for various reasons. Where the right of tenure comes to be regarded as absolute, periodical redistributions are no longer feasible.

length (common feet), — — so that every one may be in a position to measure (the distance) with his feet'. Lamprecht, *op. cit.*, 343.

1) The normal share, variously denominated, viz. Lat. *pars*, *portio*, *sors*, O. H. G. *hluz*, Ger. *Los*, Eng. *lot*, Lat. *mansus* (in Frankish documents of the seventh century), Ger. *Hufe*, is proportionate to the working strength of the average family. German documents frequently allude to 'Hufen' of twenty, thirty, and forty *Morgen*, or yokes (Lat. *iugera*). Where the agrarian unit is determined by the amount of ploughing which a 'yoke' can do in a day (forenoon), the size of a *Hufe* (O. H. G. *huoba*) will vary accordingly. The average holding, however, may be said to approximate thirty *Morgen* of arable land, in addition to a usufructuary right in the *almend* of the community. Brunner, *op. cit.*, 88f., 284f. Cp. Eng. 'hide'; see below, chap. XVI. 2) Arable lots are often referred to as ploughlands (*terrae aratorum*); Maurer, *Einführung*, 173; Lamprecht, *op. cit.*, 371; Ross, *op. cit.*, 8—9. 3) The intermixture of strips is due to a desire to give to each member of the community the same advantages and disadvantages of soil and sun. 4) Schröder, *Lehrbuch der deutschen Rechtsgeschichte*, 56—57. 5) Maurer, *op. cit.*, 74—75. 6) *Op. cit.*, 6 (75).



Fustel de Coulanges, the well-known French historian, contends that there is nothing in early German law to suggest that the social and economic arrangements of the middle ages were the outcome of a primitive communism<sup>1</sup>. Private property, for instance, is already fully established as the dominant system of tenure when the mark first appears in documentary evidence<sup>2</sup>. In proof of this the same writer calls attention to the early existence of large estates, cultivated by serfs and slaves and subject to the rights of inheritance, donation, and sale<sup>3</sup>. Moreover, in dispositions of landed property the 'commons' attached to an estate are frequently "given, sold, or exchanged by some one to whom they belong"<sup>4</sup>. Coulanges further draws a distinction in the case of the *communia* between holding in common and communism. To illustrate, forests and pastures common to several persons are not necessarily common to everybody. "The fact is that the earlier condition of things, of which we can see the traces in German legislation, was not communism, but the common ownership of the family"<sup>5</sup>. It is important to bear in mind, however, that the family to which Coulanges refers is none other than the Roman family<sup>6</sup>. Whether such a limitation will explain the diverse social phenomena, suggestive of communism among races of Semitic and Aryan stock is extremely doubtful. We have already had occasion to observe that the 'family' of the ancient Semites was a very elastic term<sup>7</sup>.

1) Ross even goes so far as to say that in the face of the evidence at our disposal "the conclusion must be, not that there was communism before there was individual property, but that there was individual property before there was communism". *Op. cit.*, 65. Cases of communism from the thirteenth and succeeding centuries "have been cited", says Ross, "as evidence to support a theory of primitive communism; according to which, private property has been derived from the disentanglement of individual from collective rights; the rights of the family from those of the clan; the rights of the individual from those of the family. We hold a theory which is quite the reverse of this. We believe that private property existed first; that common property came into existence afterwards, in consequence of an entanglement of individual rights and gradual annihilation of them: and this theory is, we believe, supported by the concurrent testimony of the early records." *Ibid.*, 40. 2) Coulanges, *op. cit.*, 42. 3) Maurer attributes these practices to the influence of Roman law. 4) Coulanges, *op. cit.*, 49. 5) *Ibid.*, 27. 6) Cp. *La Cité Antique*. 7) See above, chap. I. That the Hebrew nation was

A good instance of Coulanges' onesided treatment of the mark system can be found on page 48 of his book on "The Origin of Property in Land". Here the writer virtually says that the rights of common enjoyed by tenants stand in no relation to an earlier custom of joint-ownership, but that they are simply "connected with the old system of the private holdings"<sup>1</sup>. No allusion is made to the collective enjoyment of the forest and pasture lands, or to the supervision of herds by a communal herdsman. Nor is a reference found to the mutual obligations resting on villagers, who worked the soil under the open field system, with its compulsory rotation of crops, rules of fallow, and its other minute regulations, having for their object a common plan and order of cultivation. Fustel de Coulanges overlooks the economic side of the question. "He never seemed to grasp the difference between what we may call the joint-husbandry of the mediaeval village group, and the liberty of the modern farmer to make of his land what he pleases. While pointing out that M. de Laveleye does not prove common ownership, he fails to realize that, even if this is so, the joint-husbandry, with its appurtenant common rights, is a phenomenon of the utmost interest, and deserves careful attention. He seems to think that it explains itself; although, the more complex and the more widespread it proves to be, the less likely does it seem that it originated in the miscellaneous promptings of individual self-interest"<sup>2</sup>.

regarded as an extension of the family follows from such expressions as the 'family of Israel', and the 'children of Jacob-Israel'. For Gaelic *finè*, see below, chap. XIV.

1) The French savant traces all property in land to private ownership. Blumenstok, however, in the work already cited (p. 47), points out the "Kritiklosigkeit, die wir bei diesem Schriftsteller (Fustel de Coulanges) überall da finden, wo es sich um Bodenrechtsverhältnisse handelt, die sich von dem sogenannten vollen Eigenthume durch irgend etwas unterscheiden". Cp. pp. 220, 225f., 250, 257, 283, 297f., 364; Grupp, *op. cit.*, 206, n. 2; 207, n. 4. 2) Ashley, *The English Manor*, p. XLI, in the introductory chapter to Coulanges' work on "*The Origin of Property in Land*".

## Chapter XIV

## The Tribal System of Ancient Ireland

Before taking up certain phases of the English land system, it will be necessary to call attention to the tribal system of ancient Ireland and Wales. Speaking of the tenacity of the tribal system in these two countries, Mr. Seebohm says that it was no "more remarkable than its universality. As an economic stage in a people's growth it seems to be well-nigh universal. It is confined to no race, to no continent, and to no quarter of the globe. Almost every people in historic or prehistoric times has passed or is passing through its stages"<sup>1</sup>. We begin with the Irish tribal system, which undoubtedly represents a purer form of tribal life than that of Wales in that it never passed directly under Roman imperial rule<sup>2</sup>.

For the early history of landholding in Ireland we are fortunate in having at our disposal the Brehon<sup>3</sup> law tracts, according to which the land, in theory at least, belonged to the tribe and not to the individual. "Every tribesman is able to keep his tribe-land<sup>4</sup>; he is not to sell it or alienate or conceal it<sup>5</sup>, or give it to pay for crimes or contracts"<sup>6</sup>. Contracts between individuals involving tribal lands may be rejected by the tribe. "Every contract<sup>7</sup> which the tribe do not recognize, they impugn and dissolve, if the tribe be in their lawful conditions<sup>8</sup>,

1) *Op. cit.*, 244; cp. *Ibid.*, *The Tribal System in Wales*, 52. 2) *Ibid.*, *The English Village Community*, 232; cp. Skene, *Celtic Scotland*, III, 197—198.  
 3) Properly called *Feinechas*, i. e., the laws of the *Feine* or *Feini* ('fainyeh'), or free (Gaelic) land-tillers. Brehon is an Anglo-Irish term derived from Gaelic *brethem*, 'a judge', the *n* of *brehon* coming from the genitive and dative forms *brethemain*, *brethemain*, pronounced *brehoon*. Joyce, *A Social History of Ireland*, I, 168. 4) Cp. *O. Eng. folcland*. 5) i. e., in favor of an outsider, even if adopted into the tribe. 6) *Ancient Laws of Ireland*, II, 283. 7) i. e., if entered into without the concurrence of the tribe as a whole. 8) "If the tribe be in their lawful conditions, i. e., if the tribe be in the conditions which are required of them, i. e. as to their having proclaimed the person who made the covenant, or having been in ignorance of his covenant; also that they be not themselves stained with crimes." Gloss on *Senchus Mor*, *Shanahus More*, or *Great Old Law*

the lands, the live chattels . . . of the tribe shall not be seized for it"<sup>1</sup>. Shares of tribe-land are to be kept intact. "No person should leave a rent upon his land or upon his tribe which he did not find upon it . . . Every one is wealthy who keeps his tribe-land perfect as he got it, who does not leave greater debt upon it than he found on it"<sup>2</sup>. The power of disposition over landed property is vested in the tribe as a corporate body. "No person should grant land except such as he himself has purchased, unless by the common consent of the tribe, and that he leaves his share of the common lands to revert to the common possession of the tribe after him . . . The proper duties of one towards his tribe are, that when he has not bought he should not sell"<sup>3</sup>. As there was little buying and selling of land inhabited by a tribal group, the sale of purchased land could hardly have been a factor in early Irish society. The tribe, in the last analysis, is the proprietary unit. Even the disposal of cattle was not wholly free from restriction. A man about to sell a cow, for instance, had to make his intention known to the chief of his tribe, the chief or any other member of the tribe having a right of preëmption or first offer<sup>4</sup>.

The Irish tribal arrangements seem "to be the result mainly of the long-continued habits of a pastoral people"<sup>5</sup>. From the most remote ages cows formed the standard of value by which prices, wages, marriage portions, and even lands were estimated<sup>6</sup>.

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*Book*, II, 259. The *Senchus Mor* claims to be a revised edition of old Irish law in general use before the time of St. Patrick.

1) *Ancient Laws of Ireland*, II, 289; cp. II, 285. 2) *Ibid.*, III, 52.  
 3) *Ibid.*, III, 53, 55. 4) Ginnell, *Brehon Laws*, 115. 5) Seeböhm, *op. cit.*, 2:9. 6) Land values are computed on the basis of so many milch cows (*Ancient Laws of Ireland*, IV, 277). Cows and oxen were generally looked upon by the ancients as the chief source of wealth. Abraham, for instance, is said to be a man of wealth because of the number and size of his herds (Gen. 12:16; 13:2; 15:9; 24:35). The value attached to cattle, more especially to those of the bovine genus, is illustrated by the image of an ox stamped on Greek coins, by the figure of a bull among the signs of the zodiac, by the sacred bull (Apis) of the Egyptians, and by the cult of the Hindus. The injunction against the muzzling of oxen when treading out the corn was known to Hindus and Hebrews alike (Deut. 25:4; Hos. 10:11). Cattle of the bovine genus, both as a means of sustenance and of ploughing the land, were in constant demand. And

According to a poem of the seventh century, the area of a *baile*, or townland, is expressed in terms of pasturage: "A *baile* sustains three hundred cows, four full herds therein may roam"<sup>1</sup>. The poem also tells us that ancient Ireland contained a hundred and eighty four *tricha séds*, or thirty hundreds (of cows), each hundred comprising thirty townlands, thus making a total of five thousand five hundred and twenty *bailes*, or townlands. And finally we learn that every townland was divided into four quarters<sup>2</sup>, corresponding to the four herds of seventy-five cows each. "When the tribes passed from the hunting and nomad state to the pastoral, and became possessed of large herds of cattle, it was a natural consequence that each tribe should appropriate a special territory for their better management"<sup>3</sup>. Among communities chiefly composed of graziers, as in the laws of the Brehons, "the most appropriate distribution of land . . . is the parcelling into large tracts for the convenience of the great divisions of the people — the tribes, clans, septs or kindreds — and the intercommoning of the herds of each division within its boundaries, according to certain rules"<sup>4</sup>. The unappropriated and therefore unfenced common lands — waste, forest, and mountainland — were ordinarily used as a common pasture ground by every free tribesman. Taking the cow as the unit of grazing, he might turn out the specified number of units or their equivalents in geese, sheep, oxen, etc.<sup>5</sup> To facilitate 'common herding'<sup>6</sup> under the supervision of special herdsmen, bells were hung about the necks of cows and sheep to distinguish them from the rest of the herd<sup>7</sup>.

While the Brehon laws testify to the predominance of grazing husbandry over agriculture, the cultivation of the soil nevertheless makes its appearance at a very early date. The

hence their importance in early times as a medium of exchange. Cp. Lat. *pecunia*, 'money' (from *pecus*, 'cattle'), Eng. 'pecuniary'; also O. E. *feoh*, *fioh*, *feo*, O. Saxon *fehu*, 'cattle', 'property', 'money' — English fee in the sense of remuneration for professional services —, Gothic *faihu*, 'property', 'money'; O. H. G. *fihu*, Ger. *Vieh*, 'cattle'. For the importance of cattle among the early Germans, see Brunner, *op. cit.*, 82

1) Seebohm, *op. cit.*, 221.

2) Cartrons.

3) Skene, *op. cit.*, 139.

4) Vinogradoff, *The Growth of the Manor*, 17.

5) *Ancient Laws of Ire-*

land, IV, 101.

6) *Comingaire*, *Ibid.*, I, 142.

7) *Ibid.*, I, 143. Cp. Joyce, *op. cit.*, II, 282f.



threefold division of 'superior and inferior arable land' is a case in point<sup>1</sup>.

Two passages of unusual interest found in the non-legal Irish literature may be cited in this connection. The *Lebor na Huidre*, or 'Book of the Dun Cow', compiled in the seventh century by the abbot of Clannacnois, and later copied into an Irish manuscript of the year 1100, states that 'there was neither trench, nor fence, nor stone wall round land in those days, until there came the time of the sons of Aed Slaine<sup>2</sup>, but (only) smooth fields. Because of the abundance of households in their time, therefore it came to pass that they introduced boundaries in Ireland'<sup>3</sup>. If used for agricultural purposes, the 'smooth fields' of our passage would be cultivated in keeping with the open-field system<sup>4</sup>. In the scholiast's preface to the Book of Hymns<sup>5</sup>, attributed to the eleventh century, we read: "the people were very numerous in Ireland at that time<sup>6</sup>, and their number was so great that they only received thrice nine ridges<sup>7</sup> for each man in Ireland, to wit, nine of bog, nine of smooth<sup>8</sup> (arable), and nine of forest"<sup>9</sup>. It is instructive to find that, in both passages, the change from an unrestricted to a restricted enjoyment of the land is ascribed to an increase of population. But usufructuary rights may eventually pass over into rights of ownership. Indeed, private ownership in land was by no means unknown to the writers of the Brehon Code<sup>10</sup>.

The structure of Irish society is of sufficient importance to warrant a few remarks before giving a brief description of the most characteristic forms of landholding in ancient Ireland. As

1) *Ancient Laws of Ireland*, IV, 277. 2) seventh century. 3) Maine *Early History of Institutions*, 114. 4) Seebohm suggests that the mode of cultivation may have resembled that of the Irish *rundale* or *run-rig* system, whereby a whole townland or smaller area is held in common by the people of the village and shared among them in rough equality by dividing it up (periodically) into a large number of small pieces, of which each holder takes one here and another there". *Op. cit.*, 226, 228. Cp. Maine, *op. cit.*, 101. There are several references to 'common tillage' in the *Senchus Mor*. Cf. *Ancient Laws of Ireland*, I, 169, 175; III, 17. 5) *Liber Hymnorum*. 6) During the reign of the sons of Aed Slaine, 656-664 A. D. 7) *tri noi immaire*, or long narrow strips-not hill ridges. 8) 'nine of field'. Joyce, *op. cit.*, I, 185. 9) Maine, *op. cit.*, 113f. 10) *Ancient Laws of Ireland*, III, 53; IV, 69-159, etc.

already intimated, the tribe<sup>1</sup> consisted of several clans, or houses, of one or more septs, if such were in existence, and of a limited number of *finè*<sup>2</sup>.

*Clann*, sometimes used in the sense of tribe, really means 'children'. This is of more than passing significance in that every organic tribal unit claimed descent from a common ancestor. Despite the theory of common origin, strangers might be adopted<sup>3</sup> into one of the tribal subdivisions, provided the assembled group had nothing to interpose<sup>4</sup>.

*Finè*<sup>5</sup>, in Irish terminology, admits of various translations. Although commonly applied to the smallest unit of society, it may, with equal propriety, be used of the tribe itself. We might call it a sort of miniature tribe, in contradistinction to the family of modern times. "It was considerably more comprehensive than our word family. It has been compared with the Roman familia, but it was more comprehensive than even that. When complete it consisted of the *flaith-finè*, and sixteen other male members not ceasing to belong to it until sufficient new members had been born or adopted into it, upon which event happening the old were in rotation thrust out to the sept, and perhaps began to form new *finès*"<sup>6</sup>.

The word *tuath*, originally meaning a tribe, was subsequently applied to the territory occupied by the tribal community, *Cinel*<sup>7</sup>, from now on, taking its place.

The greater portion of the tribe-land, occupied by all free members of the tribe, or its component parts, was subject to *Gabhailcine*, or redistribution after a fixed period of years. This arrangement, referred to by the Anglo-Irish lawyers of the seventeenth century as gavelkind, anciently implied a reversion of the whole area to the tribe on the death of a number of tribesmen, or in the event of young men attaining their majority. In former times the redistribution of such lands affected every free member of the tribal group. Later, however, it was confined to the land of a *finè*. That the custom of gavelling did not affect a man's crops needs no emphasis. As a matter of fact

1) *tuath*. 2) Joyce, *op. cit.*, I, 166f. 3) The one adopted is referred to as a *Mac Faosma*, 'son of protection.' 4) Ginnell, *op. cit.*, 103; cp. Andrews, *The Old English Manor*, 14, n. 3. 5) Pronounced 'finna.' 6) Ginnell, *op. cit.*, 103-104. 7) Pronounced 'Kinneel.'

every landholder was entitled to compensation for unexhausted improvements<sup>1</sup>. The peculiar feature of the entire arrangement is that when a man died the chief of the *finè*, to which the decedent belonged, did not divide the estate among the immediate heirs, but among the various households of the *finè*, adult males only being entitled to a share.

Sir John Davies, the attorney-general to James I., writing of the condition of things in Ireland from the point of view of English law remarks: "We had present certain of the clerks or scholars of the country, who . . . took upon them to tell what quantity of land every man ought to have by the custom of their country, which is of the nature of gavelkind, whereby as their septs or families did multiply, their possessions have been from time to time divided and subdivided, and broken into so many small parcels as almost every acre of land had a several owner, who termeth himself a lord, and his portion of land his country<sup>2</sup>. — Lands of the nature of gavelkind were not partible among the next heirs male of him who died, but among the sept in this manner: — The *Caen finè* or chief of a sept (who was commonly the most ancient of the sept) made all the partitions at his discretion; and after the death of any *ter-tenant*, who had a competent portion of land, assembled the sept, and having thrown all their possessions into hotchpot, made a new partition of all, in which partition he did not assign to the son of him who died the portion his father had, but he allotted to each of the sept according to his seniority the better or greater portion; these portions being so allotted or assigned were possessed and enjoyed accordingly until a new partition was made, which at the discretion or will of the *Caen finè* was to be made on the death of each inferior tenant, . . . and so, by reason of these frequent transmissions and removals, or translations of the tenants from one portion to another, all the possessions were uncertain; and the uncertainty of the possessions was the very cause that no civil habitations were erected, no enclosure or improvement was made of the land in the Irish countries, where the custom of gavelkind was in use, especially in Ulster, which seemed to

1) Joyce, *op. cit.*, I, 187. 2) See appendix to Sir John Davies' *Discovery of Ireland*; also Skene, *op. cit.*, III, 196; Seebohm, *op. cit.*, 218.

be all one wilderness before the new plantation made by the English there; and this was the fruit of this Irish gavelkind. — For these reasons, and because all the said Irish counties and the inhabitants of them from henceforward were to be governed by the rules of the common law of England, it was resolved and declared by all the judges, that the said Irish custom of gavelkind was void in law, not only for the inconvenience and the unreasonableness of it, but because it was a mere personal custom, and could not alter the descent of inheritance. And therefore all the lands in these Irish counties were now adjudged to descend according to the course of common law, and that the wives should be endowed, and the daughters should be inheritable to these lands, notwithstanding this Irish custom or usage”<sup>1</sup>.

A portion of the tribe-land, called *Cumbal Senorba*, was set aside for the maintenance of the poor and indigent, such as widows, orphans, and old childless people.

Another portion of the tribe-land comes under the category of *mensal* land, assigned to chiefs and nobles of different ranks as a reward for services rendered to the community. *Mensal* land was indivisible. On the death of the holder it descended, under the rule of *tanistry*<sup>2</sup>, not necessarily to the natural heir, but to the person elected by the group. In course of time many of these lands, as well as the holdings of professional men, artificers, and so forth, came to be regarded as private property.

The payment of public dues by every holder of land was of the nature of a tribute to the chief. Such an obligation has little or nothing in common with modern rent<sup>3</sup>.

1) Fisher, *The History of Landholding in Ireland*, in *Trans Roy. Hist. Soc.*, V, 239, 295—296.

2) The duties of a *Tanist*, or ‘Second’, were somewhat similar to those of a vice-president. Ginnell, *op. cit.*, 68. The *tanist* was ordinarily chosen by the people before a vacancy actually occurred.

3) *Ibid.*, 119.

## Chapter XV

## The Tribal System of Ancient Wales

Ancient Welsh society resolves itself into numerous kindreds, each *cenedel*, or kindred, embracing the descendants of a common ancestor to the ninth degree of descent<sup>1</sup>. Within the *cenedel* there was a smaller group of kinsmen consisting of four generations, that is, of three descents. This family group was looked upon as the prevailing unit of landholding.

Turning to the Denbigh Extent of the year 1335, drawn up for fiscal purposes, we learn that the township<sup>2</sup> of Wyckewere<sup>3</sup>, now Wygfair, was occupied by eight *gwelys*. One of these is a family group of free tribesmen, bearing the name of Lanwarghe, the son of Kendal. The latter includes three sons, six grandsons, and twenty or more great-grandsons. Corresponding to the number of sons and grandsons, the original *gwely*<sup>4</sup> contains three sub-*gwelys* and six gavells respectively<sup>5</sup>. The reason for this subdivision may be that Lanwarghe, the founder of the *gwely*, having died, the shares of the sons were likewise called *gwelys*. But in accordance with the custom of gavelkind<sup>6</sup> the sub-shares of the grandsons came under the head of gavells.

The point to be noted is that the *gwely* is a unit in respect of the district occupied by the group.

From another survey dated 1335 we learn that the kindred<sup>7</sup> of Canon, the son of Lanwarghe, completely owned in addition to a fractional share in the *villata* of Prees, the township of

1) Seebohm, *The Tribal System in Wales*, 61; Rhys, *The Welsh People*, 192, 196. 2) *villata*, 'hamlet'. The Welsh equivalent is *tref*. 3) Seebohm, *op. cit.*, Appendix B. e (72f.). 4) Also *wele*, Lat. *lectum*, bed, or couch. The Welsh evidence affords a good example of the transition 'from the primary family to the joint family and from thence to the kindred'. Vinogradoff, *op. cit.*, 13. Cp. Seebohm, *op. cit.*, 32. 5) *Ibid.*, 31f. 6) The resolution of the English judges touching the Irish custom of gavelkind, reported by Sir John Davies, informs us that "this Irish custom of gavelkind was agreeable to the custom of gavelkind, which was in use in North Wales, which custom was reprov'd and reformed by the statute of Rutland (1284 A. D.), made 12 Ed. I". The custom of gavelkind in Wales was finally abolished by Henry VIII. *Trans. Roy. Hist. Soc.*, V, 295—296. 7) progenies.



Astred Canon<sup>1</sup>. This group composed of something like fifty *prïodarii*, or free tribesmen, was subdivided into four gavells. The tenants of the several gavells could claim rights of coaration and pasture in the district thus occupied by reason of their membership in the original unit. The solidarity of the kindred is a prominent feature in the payment of the direct land-tax and in other tribal arrangements.

Viewing the extents of the fourteenth century as a whole, it is obvious that the districts enumerated were in the main occupied by communities of graziers, enjoying extensive grazing rights over one or more tracts of land<sup>2</sup>. Such rights presuppose the existence of large herds of cattle as the predominating form of wealth. The fact that the number of cattle in the possession of the kinsmen of a given group determined the quantitative aspect of the services to be rendered in each case enables us to realize something of the importance attached to cattle in early Welsh society. The cow is looked upon as the unit of value<sup>3</sup>. Even blood-money<sup>4</sup> is payable in cows. The relative values of the different tribesmen and strangers, as set forth in the Venedotian Code, are as follows: —

The chief of kindred <sup>5</sup> . . . . .	189 cows
The <i>uchelwr</i> <sup>6</sup> . . . . .	126 "
Man with a family without office . .	84 "
The innate <i>bonheddyc</i> <sup>7</sup> . . . . .	63 "
The <i>alltud</i> <sup>8</sup> of the <i>brenhin</i> <sup>9</sup> . . . . .	63 "
The <i>alltud</i> of the <i>uchelwr</i> . . . . .	31 1/2 "
The <i>caeth</i> <sup>10</sup> of this island . . . . .	4 "
The <i>caeth</i> from beyond the sea : . .	6 " 11

1) Seebohm, *op. cit.*, 37f., Appendix B. a. (49f.). 2) Seebohm, *op. cit.*, 45. Caesar's statement relating to the Britons of the interior is worth noting. "Most of the people in the interior sow no corn, but live on milk and flesh, and are clad with skins." *De Bello Gallico*, V, 14.  
3) Seebohm, *op. cit.*, 216—218, 255. 4) *galanas*, 'the fine paid for homicide by one kindred to another'. Lewis, *A Glossary of Mediæval Welsh Law*, 151. 5) *pencenedel*. By the side of the chief we find a representative body of seven elders acting as his coadjutors. Seebohm, *op. cit.*, 6) 'chief of a nousehold'. 7) Lit., one having a pedigree, i. e., 'a man of pure Welsh descent'. 8) An alien or foreigner. 9) The king or head chieftain of Cymru. Seebohm, *op. cit.*, 135, 139. 10) 'slave'. 11) Seebohm, 107.

This table makes it plain at a glance that there existed among the various members of the tribe marked inequalities. These are due in part to the conquest of the land by the Cymric<sup>1</sup> tribes, who treated the conquered race as aliens or strangers in blood<sup>2</sup>. Another contributing cause was the individual appropriation of landed estates rendered possible by the cultivation of the soil. But it will be borne in mind that agricultural pursuits played a subordinate role in the economy of ancient Wales<sup>3</sup>, and for this reason the individual factor was in no position to assert itself<sup>4</sup>.

The laws relating to agriculture are communalistic rather than individualistic. Thus, the arable strips in the open field, divided by balks of turf two furlrows wide, were distributed among the cultivators according to the contributions made by each to the common ploughteam of eight oxen<sup>5</sup>. One of the strips, denominated *erw*<sup>6</sup>, was to go to the ploughman, another to the man providing the ploughshare, a third to the driver, a fourth to the person taking care of the woodwork of the plough, a fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth to the persons contributing the eight oxen. Of course, the man who contributed more than one ox received a proportionate share of *erws*, or acres. The necessity of co-operative ploughing is accounted for by the size of the ploughteam.

As there is no record of periodical redivisions extending to all the members of a tribe simultaneously, we return to the *gwely* and its constituent gavells. The readjustment and shifting

1) 'Welsh.' 2) Seebohm, 105f. 3) Cp. Caesar, *De Bello Gallico*, V, 12. 4) Seebohm, *The English Village Community*, 187, 205; cp. Vinogradoff, *op. cit.*, 16f. 5) Seebohm, *op. cit.*, 118—124, 186. 6) Lit., "what has been tilled". The *erw* contained 3413 square yards. Rhys, *op. cit.*, 218, n. 1; cp. Skene, *op. cit.*, III, 200. The different texts, however, do not agree as to the exact dimensions of the *erw*. According to one of the sources, Howel's rod measures 18 feet, the size of the *erw* being fixed at 18 rods in length and 2 rods in breadth. According to another source we get the following equivalents: —

16½ feet = long yoke  
18 long yokes = length of acra  
2 long yokes = breadth of acra.

Wade-Evans, *op. cit.*, 339.

of the shares within the gavells is effected in one of two ways, viz. holding by *gwelys*, and holding by joint account.

The right of succession to a share of the *tir gwelyawc*, that is, to the land of a *gwely*, was established by a process called *dadenhudd*, which means "the uncovering of the hearth". The hearth "was the symbol of family ownership and inheritance. The right of the son on succession was to uncover the hearth of his father or ancestor . . . The term (*dadenhudd*) was a graphic one. The fire-backstone, set up against the central pillar of the hut supporting the roof, was a memorial or witness of land and homestead, because it bore the mark of the kindred upon it"<sup>1</sup>.

The manner in which the shares in *tir gwelyawc* were distributed among the heirs, is briefly described in 'The Law of Brothers for Land' found in the Venedotian Code. "Thus, brothers are to share land between them: four *erws* to every *tyddyn*<sup>2</sup>. Bleddyn, son of Cynvyn, altered it to twelve *erws* to the *uchelwr* and eight to the *aillt*, and four to the *godaeog*; yet, nevertheless, it is most usual that four *erws* be in the *tyddyn*. If there be no buildings on the land, the youngest son is to divide all the patrimony, and the eldest is to choose, and each in seniority choose unto the youngest. If there be buildings the youngest brother but one is to divide the *tyddyns*, and the youngest is to have his choice of the *tyddyns*; and after that he is to divide all the patrimony; and by seniority they are to

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1) Seebohm, *The Tribal System in Wales*, 82. "And the covering of the fire had a picturesque significance. Whether the fire were of wood or turf, the hearth was swept out every night. The next thing was to single out one particular glowing ember — the seed of fire — which was carefully restored to the hearth and covered up with the remaining ashes for the night. This was the nightly covering of the fire. The morning process was to uncover the 'seed of fire', to sweep out the ashes under which it was hid, and then deftly to place back the live ember on the hearth, piling over it the fuel for the new day's fire. This was the uncovering of the fire, which thus from year end to year end might never go out". 2) The 'homestead' of every tribesman consisting of

a house, cattle-yard, and corn-yard, was probably held in severalty. The Welsh, being a pastoral people, had both summer and winter homesteads, owing to the migrations of herds and herdsmen from the valleys to the higher ranges of the hills and vice versa.

choose unto the youngest; and that division is to continue during the lives of the brothers. And after the brothers are dead, the first cousins are to equalize if they will it; and thus they are to do: the heir of the youngest brother is to equalize, and the heir of the eldest brother is to choose, and so by seniority unto the youngest; and that distribution is to continue between them during their lives. And if second cousins should dislike the distribution which took place between their parents, they also may co-equate in the same manner as the first cousins; and after that division no one is either to distribute or to co-equate. *Tir gwelyawc* is to be treated as we have above stated"<sup>1</sup>. The Dimetian Code agreeing in the main with the enactment just cited continues: "Three times shall the same patrimony be shared between three grades of a kindred, first between brothers, the second time between cousins, the third time between second cousins, after that there is no appropriate share of the land"<sup>2</sup>. Although the right to a share ceases after the fourth generation the process of equalization is a continuous one, new *gwelys* being formed by the descendants of the founder of the original *gwely*<sup>3</sup>.

Apart from the special rights of the youngest son<sup>4</sup>, the Welsh *gwely* bears some resemblance to the household of Zabdi in Josh. 7 : 17 ff.<sup>5</sup>. But there is no warrant for the statement

1) *Ancient Laws and Institutes of Wales*, I, 167—160. 2) *Ibid.*, I, 542f.  
 3) Seebohm, *Tribal Custom in Anglo-Saxon Law*, 27f. 4) Sir Henry Maine believes that the institution of 'junior-right', also known as 'ultimogeniture', 'Jüngsten-Recht' and 'Juveigneurie', is the natural outgrowth of the family of ancient times. "The home-staying, unemancipated son, still retained under *patria potestas*, is preferred to the others. If this be so, there is no room for the surprise which the custom of Borough English has excited, and which arises from contrasting it with the rule of Primogeniture. But the two institutions have a different origin. Primogeniture is not a natural outgrowth of the family. It is a political not a tribal institution, and comes to us not from the clansmen but from the chief". *Early History of Institutions*, 223; cp. Elton, *Origins of English History*, 180f. The abolition of Welsh law in the reign of Henry VIII. resulted in the introduction of the laws of primogeniture and English tenure. Rhys, *op. cit.*, 400. 5) Seebohm, *The Tribal System in Wales*, 100. The elder brother acts in a representative capacity claiming no special privileges by way of inheritance.

that the structure of a Cymric *gwely* has more in common with the 'patriarchal family', under *patria potestas* than with the 'joint family' under the leadership of a chief who is only *primus inter pares*<sup>1</sup>. The principle idea associated with the institution of *dadenudd*, seems to be that the heads of the several households in the group ought to be put on an equal footing with all the shareholders of the same generation<sup>2</sup>. The father of a household could not dispose of any part of his 'family land'<sup>3</sup> without the consent of the whole *gwely*<sup>4</sup>.

Holding by joint account implies a degree of equality of a very pronounced type. The term used is *trefcyfrif*<sup>5</sup>, and signifies 'joint account *tref*'<sup>6</sup>. "The law of *tref cyfrif* is that no one's share is to be greater than that of another"<sup>7</sup>. Any person desirous of sharing in the lands of such a village "is to choose his *tyddyn* in any vacant place he may wish, which has not a house thereon; and after that to possess jointly with the others"<sup>8</sup>. Every shareholder shall receive "as much as another, yet not of equal value"<sup>9</sup>. It will be observed that the method of allotment does not exclude personal initiative. This arrangement also differs from the mode of succession previously described in that every son of lawful age<sup>10</sup>, except the youngest, may claim his share while the father is yet living. "In such a *tref* sons are entitled to land in lifetime of their father, but the youngest son is to abide the death of his father, because he is to settle in his father's place"<sup>11</sup>. Holding by *trefcyfrif*, which is especially well adapted to the relation of the English lords to their *Welsh taeogs*<sup>12</sup>

1) Contra Seebohm, *op. cit.*, 95. 2) Vinogradoff, *op. cit.*, 20f. Cp. Dimetian Code, II, 8: "By three modes is a suit of *dadenudd* to be resolved between heirs — if heirs of equal degree come together, such as brothers, in respect to their father's land, or cousins, or second cousins, in respect to their father's land, which their fathers held unshared, in succession, until they died". 3) *tir gwelyawc*. 4) Rhys, *op. cit.*, 222. 5) Composed of *tref*, a hamlet, or small village, and *cyfrif*, the meaning of which seems to be to 'reckon', 'share', 'claim'. The element *rif* in the expression *tir cyfrif* obviously denotes 'share', or 'claim' rather than 'reckon'. Lewis, *op. cit.*, 89. 6) Vinogradoff, *op. cit.*, 92, n. 30. 7) *Ancient Laws and Institutes of Wales*, XIV, 32, § 3. "A claim of equality only takes place in a *tref cyfrif*, for every one is to equalize with another, as if they were brothers." Ibid., XIV, 32, § 2. 8) Ibid., IX, 32, § 2. 9) Ibid., IX, 32, § 1. 10) fourteen and over. 11) Ibid., IX, 32, § 1; cp. V, 2, § 52. 12) half-free settlers.



settled on villain land, is met with in the 'Record of Carnarvon', drawn up in 1354<sup>1</sup>. But in a late triad, attributed to Dyfuwal Moelmud<sup>2</sup>, which claims to represent an earlier condition of things it is expressly stated that every free Welshman was entitled to three *cyfarwys*<sup>3</sup>, namely, "five free *erws*; co-tillage<sup>4</sup> of the waste; and hunting"<sup>5</sup>. To those naturally born free "pertains the privilege of location upon land and *cyfaryws*"<sup>6</sup>.

## Chapter XVI

### The Old English Township

It is extremely probable that a considerable portion of England was once occupied by *maegthes* or kindreds of Anglo-Saxon origin. Place-names with the patronymic termination -ing<sup>7</sup> are at least suggestive of the Cymric tribal household<sup>8</sup>. The analogy of Irish and Welsh tribal custom "would lead us to infer that the Anglo-Saxon settlers in England must have brought with them traditions of tribal or family ownership more or less of the type of the Cymric *grwely*, though doubtless modified by emigration and settlement in a new country . . . But they can hardly have wholly cast off their own tribal traditions and instincts. The continued payment and receipt of *wergelds*<sup>9</sup> show that they did not. Even, to take an extreme case, if they came to Britain as single settlers having left their kinsmen behind them, still kindreds would gradually grow up around their descendants in the new country. And tribal custom left to itself would give to them landed rights, quite different from those of the individual owner"<sup>10</sup>.

1) Seebohm, *op. cit.*, 18, 20. 2) "And he (Dyfuwal Moelmud) was a man of authority and wisdom; and he (first) made good laws in this country, which laws continued in force till the time of Howel the Good. *Ancient Laws and Institutes of Wales*, I, 184. 3) i. e., a gift, or present, an inheritance to which every innate Cymro was entitled. Cp. Irish *com-arba*, 'heir'. Lewis, *op. cit.*, 87. 4) *cyfar*. 5) *Ancient Laws and Institutes of Wales*, II, 516. 6) *Ibid.*, II, 547; cp. II, 503 and 229. 7) plur. -ingas. 8) Seebohm, *The English Village Community*, 347f. 9) The payment of a fine for homicide. 10) *Ibid.*, *Tribal Custom in Anglo-Saxon Law*, 505-506.

The old English term *maegthe*, signifying kindred, may also be applied to a tribal group in the sense of an ethnographic and territorial unit<sup>1</sup>. The territory of the larger unit was usually divided among the various kindreds and households belonging to the group.

The opposition of kindreds and households to alienations of landed property, whether in the interest of the church or of strangers, is in accord with tribal ideas of land tenure. Anglo-Saxon law emphasizes the solidarity of the family group in matters pertaining to the occupation and disposition of land. This is clear from the frequent concurrence of relatives not to interfere with the terms of written instruments, involving the transfer of real property out of the kindred.

There was a time when *folkland*, that is, land held under tribal custom, could not be alienated without the consent of the kinsmen of the actual holder, since every kinsman had expectant hereditary rights in regard to property held under the old customary law of the people. The term *folkland* occurs but three times in Anglo-Saxon documents<sup>2</sup>. According to a law of Edward the Elder in which *folkland* is contrasted with bookland, it appears that land may be either held by folkright or under the terms of a special charter, commonly referred to as a book. In a deed of the year 863 Aethelbert of Kent, with the consent of his *witan*, exchanges five ploughlands at Washingwell for an equal amount of land at Marsham, "and the king made that land at Marsham his *folkland*"<sup>3</sup>. Judging from the context, it is not improbable that *folkland* was subject, among other things, to the payment of a land-tax, called *gafol*<sup>4</sup>. In the will of Alfred, the Ealdorman, the testator leaves more than a hundred hides of bookland to his wife and daughter, the following provision being made for a son named Aethelwald. "I give to my son Aethelwald three hides of bookland, . . and a hundred swine, and, if the king will grant him the *folkland* with the bookland, then let him have and enjoy it: but if this may not be, then let her (my wife) grant to him whichever she

1) Vinogradoff, *op. cit.*, 138f. 2) Vinogradoff, "Folkland", in *English Historical Review*, VIII, 1—17. 3) Maitland, *Domesday Book and Beyond*, 245. 4) Vinogradoff, *op. cit.*, 244, n. 20.

pleases, either the land at Horsley<sup>1</sup> or the land at Lingfield"<sup>2</sup>. The words just quoted have been interpreted to mean that the holding of *folkland*, "the land belonging to the folk"<sup>3</sup>, was of the nature of a lease held for life, and that the ealdorman merely requests the king as the representative of the nation to renew the lease in favor of his son in the event of the lessee's death. But the possible illegitimacy of Alfred's son may explain why the *folkland* of our charter was excluded from the ordinary rules of succession. The testator, therefore, expresses the hope that the king will decide in his son's favor. However this may be, the point to be specially noted is that the devolution of *folkland* is radically different from that of bookland. This is all that we can predicate with certainty in the absence of further details<sup>4</sup>.

The Domesday Survey makes no mention of *folkland*, but it contains a passage, which refers to the conflicting rights of *maegthes* and private individuals. The latter, however, might set aside the old folkright customs by leave of the king, who enjoyed the prerogative of creating privileged land tenure<sup>5</sup>. Thus the ancient tribal views of landholding are gradually superseded by the feudalistic notion of tenure in its post-conquestual garb<sup>6</sup>.

As already intimated, early English society was organized in *maegthes* and households. A remarkable document, which antedates the Domesday Book, conclusively proves that the whole of England was arranged in tribes and households for fiscal purposes. 'The Tribal Hidage'<sup>7</sup> contains a catalogue of 34 place-names with a grand total of 244, 100 hides. Reducing this number of hides into acres, we get a very close approximation to the total acreage of modern England. As such a figure leaves no room for pasture lands and forests, we are forced to the conclusion that the old English hide was either much smaller than that of Domesday<sup>8</sup> or that, in addition to arable, it also

1) Ten hides. 2) Seven hides. Maitland, *op. cit.*, 245; *Eng. Hist. Rew.*, VIII, 9. 3) So Allen and others. 4) There are two Latin charters relating to estates in Kent, which speak of *terra rei publicae jure possessa*. 5) Vinogradoff, *English Society in the Eleventh Century*, 256. 6) But see Vinogradoff, *op. cit.*, 232. 7) Corbett, *Trans. Roy. Hist. Soc.*, XIV, 137f. 8) Vinogradoff, *op. cit.*, 155; *The Growth of the Manor*, 163; Maitland, *op. cit.*, 362f.; Seeböhm, *The English Village Community*, 52, 162.

included pasture and woodland<sup>1</sup>. It will be remembered that arable land does not necessarily apply to land already under cultivation, but to land which is potentially arable<sup>2</sup>.

The hidages recorded for each district ranging from 300 to 100000 hides, are all multiples of 100. The smaller territorial unit called a hundred comprised a hundred households. The attribution of 100 hides to each hundred implies that each household was reckoned at one hide<sup>3</sup>. Moreover, Bede's reference to the 7000 family lands of the South Saxons is in agreement with the 7000 Sussex hides of 'The Tribal Hidage'<sup>4</sup>.

It is worth noting in this connection that "the translator of Bede had not cast off all traces of tribal tradition, for he consistently used the word *maegthe* as the equivalent of Bede's *provincia*. He still thought of tribes and peoples rather than of districts and provinces. His ideas in these things ran on tribal rather than on territorial lines. So to him the hide was still the family unit, and the greater kindred or tribe, as in *Beowulf*, was the *maegthe*"<sup>5</sup>.

The Saxon hide<sup>6</sup>, or *hiwisc*<sup>7</sup>, corresponding to the *familia* of Bede, was the typical holding of the typical family<sup>8</sup>. The Latin equivalents of the land of a family frequently met with in Anglo-Saxon charters, viz. *terra unius familiae*, *terra unius casati*, *terra unius manentis*<sup>9</sup>, *terra unius tributarii*, apply primarily to free householders endowed with rights and duties quite distinct from those of servile tenants<sup>10</sup>.

The hide is a fiscal unit<sup>11</sup> approximating 120 acres. By an acre we do not mean a 'statute' or 'imperial acre' of 4840 square yards, but the amount of land which the normal ploughteam<sup>12</sup> could conveniently plough in a day. Such a mode of computation naturally produced considerable variations, depending upon the

1) *The Growth of the Manor*, 170; *English Society in the Eleventh Century*, 204. 2) *Ibid.*, 294. 3) *Ibid.*, 211, 214. 4) *Ibid.*, 196—197; Maitland, *op. cit.*, 508f. 5) Seebohm, *Tribal Custom in Anglo-Saxon Law*, 408. 6) A. S. *higid*, Lat. *hida*. 7) 'household'. 8) Seebohm, *The English Village Community*, 395; Maitland, *op. cit.*, 358f. 9) Also *mansa* and *mansio*. 10) *The Growth of the Manor*, 141. 11) The fiscal impositions under the hidage system of the eleventh and twelfth centuries varied from 2 to 6 shillings per hide. 12) The plough was ordinarily drawn by a team of eight oxen owing to the nature of the soil.

quality of the soil, and upon the strength of the ploughteam, as well as upon the density of the population<sup>1</sup>.

The hide was customarily divided into virgates and bovates. The former was equivalent to a pair of oxen, the latter to a single ox<sup>2</sup>. The normal hide, in Domesday and elsewhere, contained 4 virgates of 30 acres each, or a total of 120 acres<sup>3</sup>. To be sure, local variations also occur.

The virgate, or yardland<sup>4</sup>, as the fractional unit of a typical holding, represents a fourth part of every acre in the hide<sup>5</sup>. Its existence is barely recognized by the early Anglo-Saxon charters. It first comes to the fore in the century preceding the Norman conquest. Within more recent times the normal virgate consisted of thirty scattered acres, each of the three 'shots' containing ten acres<sup>6</sup>.

In the twelfth and succeeding centuries the Anglo-Saxon hidage is displaced by the word carucage. The latter was a kind of revival of the original Danegeld levied by the kings under extraordinary circumstances, and having as its aim the collection of a tax from the entire agricultural area of the kingdom<sup>7</sup>.

The carucate, the mediaeval Latin *caruca*<sup>8</sup>, a plough or ploughteam, is found for the most part in the Danish counties of northern England<sup>9</sup>. Fiscally, it corresponds to a hide of four virgates or eight bovates. According to the Domesday Survey<sup>10</sup>, the normal carucate, that is, the land of a plough<sup>11</sup> or ploughteam, representing a full ploughteam of eight oxen, comprised 120 acres. Toward the close of the twelfth century the carucate was reduced to 100 acres. The word carucage subsequently disappeared, its place being taken by other terms.

The Kentish solin or sulung<sup>12</sup>, the land of a plough<sup>13</sup>,

1) Cp. Seebohm, *op. cit.*, 40. 2) There is an occasional reference to a half hide of four oxen. 3) Seebohm, *op. cit.*, 37, 55. 4) The A. S. *gyrd landes*, Latinized into *virgata terrae*, a virgate of land. Eng. yard, A. S. *gyrd*, and Lat. *virga* may all be equated with *rood* (rod). 5) Maitland, *op. cit.*, 384f. 6) Seebohm, *op. cit.*, 27. 7) *English Society in the Eleventh Century*, 144. 8) French *charrue*. Cp. Braungart, *Die Urheimat der Landwirtschaft aller Indogermanischen Voelker*, 419. 9) Maitland, *op. cit.*, 395. 10) 1086 A. D. 11) *terra carucae*, *terra carucarum*, or *terra carucis*, land fit for tillage. Vinogradoff, *op. cit.*, 157. 12) O. E. *sulh*, a plough, Lat. *sulcus*. 13) Pytheas, "the Humboldt of antiquity", who



plays the same part in Kent<sup>1</sup> that is elsewhere played by the hide and carucate. As a fiscal unit it is generally divided into four yokes. This subdivision into yokes is undoubtedly very ancient<sup>2</sup>. While the references in Domesday, relating to the fiscal system of Kent are somewhat vague, it speaks of Kentish *sulungs* rather than of so many hides. There is reason to suppose that the *sulung* exceeded the hide in point of size, although Maitland seems to think that the Exchequer reckoned the *sulung* at 120 fiscal acres<sup>3</sup>.

Vinogradoff says that "the hide, the virgate, the bovaté, in short every holding mentioned in the surveys, appears primarily as an artificial, administrative, and fiscal unit which corresponds only in a very rough way to the agrarian reality"<sup>4</sup>. But in the eleventh century the hides, the carucates, and the *sulungs* were not merely fiscal units; they were actual shares in the land itself<sup>5</sup>. In spite of local arithmetical variations regarding the content of these units, they nevertheless preserved their characteristic as shares simply because they were always equal as against each other within the bounds of the same township<sup>6</sup> at

visited the southern part of England (Kent) in the fourth century before Christ, observes that "the natives collect the sheaves in great barns and thresh out the corn there, because they have so little sunshine, that our open threshing-places would be of little use in that land of clouds and rain". Elton, *op. cit.*, 30, 45. In Caesar's time the inhabitants of Kent were far more civilized than the Britons of the interior: "The most civilized of all these nations are those inhabiting Kent, which is entirely a maritime district, nor do they differ much from the Gallic customs. Most of the people in the interior sow no corn (at all), but live on milk and flesh, and are clad with skins". *D.B.G.*, V, 14; cp. chap. XIII. In chapter XII Caesar alludes to the cultivation of the maritime district by Belgic tribes settling in the south-east corner of Britain.

1) The *sulung* also occurs in Essex. 2) Maitland, *op. cit.*, 466; Vinogradoff, *op. cit.*, 92, 282. 3) *Op. cit.*, 485; but compare Vinogradoff, *op. cit.*, 276; *Villainage in England*, 255. 4) *Ibid.*, 241. 5) *English Society in the Eleventh Century*, 201. 6) O. E. *tūn*. M. E. *toun*, originally a hedge or enclosure (Ger. *Zaun*, hedge), and hence the enclosed space itself, whether it embraces a single farm or a village (Cp. Irish *dun*, Welsh *din* (*dinas*, a town), a fortified place or stronghold, Latinized into *lugdunum*, etc). Forest clearings were measured out by rods and "the whole homestead was called a *tūn* or a *worth*, because it was *tynd* or girded with a wattled fence of *gyrds* or rods". Seebohm, *op. cit.*, 172.

one and the same time<sup>1</sup>. Roughly speaking, the hide shares with their fractional subdivisions correspond to the divisions of the ploughteam, or to the relative efficiency of the ploughteam for tillage.

Originally, the hide was looked upon as the normal holding of every free landholder<sup>2</sup>. But as time goes on, we sometimes find free people in possession of fractional holdings, called virgates and bovates. This division of the normal holding into fractional proprietary units might be assigned to a variety of causes, among which the Kentish system of succession is by no means the least in importance<sup>3</sup>.

Succession by gavelkind, although occurring in other parts of England, is frequently spoken of as the custom of Kent. It involves, in the event of the father dying intestate, an equal division of the patrimony among the sons of the decedent. Illegitimate sons, on the contrary, do not inherit equal portions with those entitled to a full share. In default of sons the estate is divided equally among the daughters, the wife, however, being dowable of one half<sup>4</sup>.

The ancient tenure of gavelkind found principally in Kent is a characteristic remnant of the hereditary succession of free folk<sup>5</sup>. It affords a good illustration of the customary law of England. That certain of its features may be traced back to Saxon usage is evident from the fact that no special privileges are accorded to the eldest son previous to the introduction of the feudal law of primogeniture<sup>6</sup>. All lands in Kent, unless

1) Ibid., 152. 2) Ibid., 201. 3) Ibid., 315. 4) The resolutions of the English judges, relating to the custom of gavelkind in Ireland, tell us that the Irish custom of gavelkind differed from the custom of Kent, in four points: — (1) "By the custom of Kent the land of the nature and tenure of gavelkind is partible among the next heirs, males only; and such coparceners, after partition, have a certain estate of inheritance in all their portions. (2). The bastards are not admitted to inherit equally with the legitimate sons. (3). The wife of every tenant in gavelkind is endowable of a moiety. (4). In default of males, the heirs female inherit, and therefore the custom of gavelkind used in Kent hath been always allowed and approved of as good and lawful custom by the law of England". *Trans. Roy. Hist. Soc.* V, 295.

5) Vinogradoff, *op. cit.*, 141. 6) Ibid., 205. A passage from the thirteenth-century Customal speaks of the Kentish practice of ultimogeniture or unior-right "before the Conquest, and at the Conquest, and ever since until now". Elton, *Origins of English History*, 185f. But the more preva-

exempted by special statutes, are subject to the rule of gavelkind. Its survival in this locality is due to the superior bravery of the men of Kent.

Gavelkind<sup>1</sup> tenure, as the word imports, has reference to the payment of gavel on the part of a rent-paying peasantry<sup>2</sup>. This obligation might also be met by non-military service. Thus it became an easy matter to identify the custom with socage, or free non-military tenure. But notwithstanding the tendency toward a pulverization of holdings due to succession in partible socage, the unity of the holding was preserved by communities of co-heirs<sup>3</sup>, banding together primarily in the interests of economic efficiency<sup>4</sup>. The custom of gavelkind coupled with an extensive agricultural husbandry would sooner or later defeat itself without the corrective of the household community. In no other way could the above mentioned proprietary units be maintained for so many centuries. These facts "stand in a closer relation to the customs of tribal divisions than to feudal practices. They are, in so far, more Saxon than Norman and more suitable for freeholders than for tenants in villainage. All these observations are well in keeping with the systematic opposition between the custom of Kent and that of adjoining counties, as Kent was deemed free from the taint of villainage"<sup>5</sup>. Men of Kentish extraction were recognized by the Common Law Courts as personally free and therefore exempt from villainage<sup>6</sup>.

But the old tribal system of preconquestual England was not to be eliminated as a system without leaving its impress upon the forms of landholding, as well as upon the economic arrangements of the mediaeval village community<sup>7</sup>. As time went on, the Saxon *maegthc* was gradually superseded by the

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lent form of inheritance was equal division among sons. Pollock, *English Law before the Norman Conquest*, in *Alfred the Great*, 238.

1) The Old English *gafolgēcýnd* (*gafolcund*), from *gafol*, payment, tribute, and *gēcýnd*, species, kind. For the first member of the compound, compare the Teutonic root meaning 'to give', Old English *giefan*; German *Gaben*, *Abgaben*, or gifts of food under the German tribal system; the med. Lat. *gabulum*, *gablum*; the Fr. *gabelle*, tax. 2) *Villainage in England*, 207. 3) Cp.

the German *Gauerben*, Lat. *coheredes*, *comparticipes*, *consortes*. 4) *Villainage in England*, 252; *The Growth of the Manor*, 142. 5) *Ibid.*, 316; cp. 318.

6) *Villainage in England*, 205f. 7) *English Society in the Eleventh Century*, 471; *The Growth of the Manor*, 145f.

English township or village<sup>1</sup>. Owing to a general collapse of the old order of things in the latter half of the eleventh century, the Saxon ceorls and the free Scandinavians were merged into the *socemanni* and into the *liberi homines* of the Domesday Survey<sup>2</sup>. "The land where the sokemen and 'free men' lived"<sup>3</sup> was a land of true villages, of big villages, of limitless 'open fields', whereas the hamleted west was servile"<sup>4</sup>. In the time of Edward the Confessor, there were villages in which the manorial element was apparently non-existent<sup>5</sup>. They were free in the sense of their being at liberty as individuals to place themselves under the protection of whatever lord or lords they deemed most suitable for their purpose, which is quite distinct from manorial lordship over a village group<sup>6</sup>. Maitland, in alluding to such a village, says: "Its members enjoy a freedom of which no freeholder of the thirteenth century would even dream, and in a certain sense we have here a free village community"<sup>7</sup>. Domesday refers to a township in Bedfordshire where 'the people of the *vill* held the land in common and which they were at liberty to sell'<sup>8</sup>.

In the center of the village we find an aggregation of houses surrounded by separate enclosures. Over each of these the villager seemingly had an undisputed right of private owner-

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1) *Eng. Soc. in the Elev. Cent.*, 216. 2) *Ibid.*, 473. Cp. *The Growth of the Manor*, 340f. 3) i. e. in the eastern shires of England. 4) Maitland, *op. cit.*, 140f. The predominance of the village as a mode of settlement in nowise militates against the co-existence of single farms and hamlets in the same district. The distribution of the servile population shows that early English society was not conducive to slaveholding on a large scale. *The Growth of the Manor*, 202f. 5) Seebohm, however, would ascribe such phenomena to exceptional circumstances due to the Danish invasion. *Tribal Custom in Anglo-Saxon Law*, 523. But the manorial element seems to have been superimposed on the English township or village, as in the case of the above villages, which were transformed into manors after the conquest. 6) The king himself was the only lord recognized by a large number of sokemen. 7) *Op. cit.*, 142. Cp. *English Society in the Eleventh Century*, 397. In a conveyance of the year 995 the village of Dumbleton, located on *communi terra*, is freed by Aethebert of all exactions, except the usual threefold duty of the bookland formula. *Ibid.*, 259—260. For another example of the free village community, see Gomme, *The Village Community*, 173f. 8) *Hanc terram tenuerunt homines villae communiter et vendere potuerunt.*

ship, subject only to the superior power of the village community as a whole<sup>1</sup>.

Round the village lay the open field arable usually divided into three compartments, called furlongs or shots. These in turn were subdivided into narrow, oblong acre or half-acre strips separated from each other by green balks<sup>2</sup> of unploughed turf. There were long and short strips owing to the conformation of the soil, the normal strips, however, being 40 rods in length and 4 rods in width. In the case of strips running at right angles to those of a neighboring compartment or furlong, the strip adjoining the latter was converted into a 'headland' in the absence of a road giving access to the strips in question. This headland upon which the plough was turned could not be cultivated by the owner until all the other strips had been ploughed.

As to the rotation of crops, several varieties occur of which the two and three course systems are the most prevalent. The former with its alternate change from crops to pasture is often met with in documents of the twelfth and thirteenth centuries<sup>3</sup>. But the latter is the most common in the middle ages as well as in more modern times. The three-field system involves a triennial succession of winter grain<sup>4</sup>, spring crops<sup>5</sup>, and fallow. Thus, one of the three fields was always fallow.

According to the laws of Ine, the growing corn is to be protected by hedges similar to those found on the common meadows<sup>6</sup>. When the crops had been gathered, the hedges were removed, and the arable strips relapsed into common pasture between harvest and seed-time. Whether this implies an original shifting occupation of the arable, it would be difficult to say. However, traces of such a practice come to light in urban com-

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1) *The Growth of the Manor*, 183f. The early Teutons relegated the homestead into the category of movable property, thus giving ample scope for the formation of new settlements whenever necessary. In some cases homesteads were allotted to groups of settlers by the English village community. Ibid., 166. 2) The several compartments are divided from each other by still broader balks, frequently overgrown with bushes. 3) *Villainage in England*, 224f.; cp. Nasse, *On the Agricultural Community of the Middle Ages*, 6, 52. 4) wheat or rye. 5) barley or oats, beans and peas being added later. 6) *English Society in the Eleventh Century*, 278; *The Growth of the Manor*, 174; cp. Seebohm, *The English Village Community*, 110.



munities with agricultural antecedents, pointing in the direction of ancient custom<sup>1</sup>. There are some traces of shifting agriculture in the rural communities of Lincolnshire and in the Highlands of Scotland. "Lord Exeter has property on the Lincoln side of Stamford, that seems held by some tenure of ancient custom among the farmers, resembling the *rundale*<sup>2</sup> of Ireland. The tenants divide and plough up the commons, and then lay them down to become common again, and shift the open fields from hand to hand in such a manner, that no man has the same land two years together; which has made such confusion, that were it not for ancient surveys it would now be impossible to ascertain the property . . . And with respect to common fields, the same practice, under the name of *run-rig*<sup>3</sup>, formerly was common in the Highlands of Scotland. In the Highlands, it is understood, that this apparently irrational regulation was established . . . by the chieftains of clans, to prevent their vassals from claiming the lands which they were allowed to cultivate, — as their own, by the rights of constant and long occupancy"<sup>4</sup>. The shifting possession of the arable may also be due in a measure to the necessity of co-operative ploughing on the part of villagers having but one or two oxen<sup>5</sup>. But, as a rule, the arable strips lying in intermixture throughout the various shots were owned in severalty by the members of each township or village.

Intermixed ownership constitutes one of the most remarkable and important features of the open field system. The existence of intermixed holdings in comparatively early times is proved by old English charters, in which plots of arable are said to lie in intermixture between each other<sup>6</sup>. This curious inter-

1) Gomme, *op. cit.*, 188f. (Malmesbury); Maitland, *Township and Borough*, 55f. (Cambridge); *The Growth of the Manor*, 261, n. 27; Maine, *Village Communities in the East and West*, 94—96. 2) A compound noun consisting of *roinn*, 'lot', and *diol*, 'portion', hence division by lot. Grupp, *op. cit.*, 125, n. 4. 3) Composed of *roinn*, 'lot', and *ruith*, 'portion'. The second element of this word is sometimes equated with 'ridge' (*erw*). 4) Marschall, W., *Review of the Reports of the Board of Agriculture from the Eastern Department of England* (1811), 102. The division of the land in Seghebo points to a redivision of the arable in earlier times. *Villainage in England*, 233f.; *The Growth of the Manor*, 178—179. 5) Seebohm, *op. cit.*, 113. 6) *English Society in the Eleventh Century*, 277f.

mixture of strips seems to have originated, not in the practice of coaration carried on by a team of eight oxen, but in the desire to equalize as much as possible the holdings of the several tenelements "as to the quantity and quality of the land assigned to them in spite of all differences in the shape, the position, and the value of the soil".

Private rights in respect of meadows are reduced to a minimum, owing to the great scarcity of this kind of land for the production of the annual hay crop. In documents of the old English period, there is an occasional reference to meadows owned in severalty<sup>2</sup>. But the common meadows, or share-meadows<sup>3</sup>, mentioned in the Saxon charters, evidently refer to a community of shareholders, whether large or small, enjoying common or proportionate rights in land of this category. The share-meadows of Ine's laws doubtless correspond to the 'lot-meadows' of later times apportioned either by lot or by rotation, each shareholder receiving one or more 'lots' in accordance with the accepted rules and regulations of each locality<sup>4</sup>. The strips thus assigned were usually protected by hedges from the spring of the year till Lammas day<sup>5</sup>, and hence the expression 'Lammas meadow'. With the removal of the hay all individual rights to the 'lot meadows' ceased, the latter reverting into the condition of undivided pasture land.

There can be no question as to the type of ownership reflected in much of the evidence at our disposal. Oxford, with its Port Meadow, affords an instructive example of communal, or corporate ownership, which may be traced back to the days preceding the Conquest. "All the burgesses of Oxford possess in common the pasture outside the wall" which is none other than the Port Meadow of the present time<sup>6</sup>. And "a few miles from Oxford, the Yarnton meadows are still distributed according to immemorial custom, reminding one of analogous practices employed in the case of Aston and Cote"<sup>7</sup>.

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1) *Villainage in England*, 254. 2) Nasse, *op. cit.*, 26—27. 3) *English Society in the Eleventh Century*, 277—278. 4) Seebohm, *op. cit.*, 110, n. 2; Nasse, *loc. cit.* 5) First of August. 6) *English Society in the Eleventh Century*, 258, 399; but compare Maitland, *Domesday and Beyond*, 202. 7) Vinogradoff, *op. cit.* 287.

The common meadows, appertaining to the Aston village community, were divided into thirteen sections, each of which being in turn subdivided into four parcels or 'sets'. At a general meeting of the freeholders and tenants the meadows now ready for the hay crop were allotted to the villagers in the following manner: "Four of the tenants came forward, each bearing his mark cut on a piece of wood, which, being thrown into a hat, were shaken up and drawn by a boy. The first drawing entitled its owner to have his portion of the common meadow in set one, the second drawn in set two, etc., and thus four of the tenants have obtained their allotments. Four others then came forward, and the same process is repeated until all the tenants have received their allotments. When the lots are all drawn, each man went armed with his scythe and cut out his mark on the piece of ground which belonged to him. . . A single farmer might have to cut his portion of grass from twenty different places, though the tenants frequently accommodated one another by exchanging allotments when it was convenient for parties to do so".

Besides the meadows used for pasture during a part of the year, resort was often had to the woods for a similar purpose. Pannage rights were of considerable importance to the peasantry of the middle ages, because of the widespread use of pork as an item of food. Thus, in the days of King Ine, the value of a tree depends on its ability to give shelter to so many swine<sup>2</sup>. Domesday estimates the value of a forest by the number of swine, which might feed on the 'mast' or acorns of trees of the glandiferous type. The extent of the woodland is briefly set forth by a reference to its nutritive capacity. According to the survey of Westminster, there is "wood for 100 pigs"<sup>3</sup>.

There can be little doubt as to the general aspect of such extensive forest areas as the Forest of Anderida, embracing at one time the Wealds of Kent, Surrey, and Sussex<sup>4</sup>. Tracts of woodland, which were not as yet converted into Royal forests<sup>5</sup>,

1) Gomme, *op. cit.* 166. 2) *The Growth of the Manor*, 169. 3) Seebohm, *op. cit.*, 98. 4) Elton, *op. cit.*, 104, n. 1. 5) The origin of Royal forests in England is very obscure. Of the numerous forests said to have been in the possession of the Crown, we may cite the following well-known survivals, viz. Epping Forest, Ashdown Forest, The New Forest, Cannock Chase. etc. Shaw-Lefevre, *English Commons and Forests*, 103f., 161f., 228f.

are often found in the common use of the domain and tenantry of the different manors. The wood, in some cases, "was managed by the village community, according to certain customary rules<sup>1</sup>. Every tenant had a right to fell as many young trees as he wanted to keep his house and his hedges in order. It sometimes happens, that the lord and the homage enter into agreement as to the bigger trees, and for every trunk taken by the lord the tenantry are entitled to take its equivalent<sup>2</sup>". Ordinarily, the right to the wood was commensurate with the size of the holding. It appears, however, that the enjoyment of common forest rights by the occupiers of adjacent lands was not always bound up with manorial considerations.

The temporary reversion of the arable and meadows into common open pasturage furnished but a small supply of food for the cattle of the township or village. Neither could extensive tracts of wood pasture make up the deficiency. Most of the food necessary was provided by vast stretches of wild pasture or waste land appertaining to the township. Pastoral land held in severalty occurs less frequently in the early records than the stocking of the common pasture grounds by the members of townships<sup>3</sup> and manors. The ownership of the common pasturage by the townships of King Eadgar's laws<sup>4</sup> is a case in point. "He who rides out after cattle should give notice to his neighbor wherefore he does so, and when he returns home he must also notify who were the witnesses that he bought cattle. If, however, not having that object in view, he should make a journey and conclude a purchase he must give notice on his return; and if the purchase should have been live cattle, he must place them, with the sanction of the township, on the common pasturage. Should he neglect to do this for the space of five nights, the townspeople shall report the circumstance to the Inspector of the Hundred"<sup>5</sup>. That the right to

The rapid and violent extension of forest rights after the Conquest points in the direction of Norman legislation. Indeed, there is reason to suppose that the forest law seriously interrupted the growth of the manorial system. *English Society in the Eleventh Century*, 293, n. 1: *The Growth of the Manor*, 259, n. 9.

1) *Villainage in England*, 358—359. 2) *Ibid.*, 276. 3) The supervision of the village herds commonly devolved upon the village herdsman.

4) *IV*, 7—8. 5) *Nasse, op. cit.*, 27.

the common pasturage was sometimes vested in the hundred is evidenced by a passage from the Domesday book. 'In the hundred of Coleness<sup>1</sup> there is a certain pasture which is common to all the men of the hundred'<sup>2</sup>.

Rights of pasturage, exercised occasionally in common with the royal cattle, were materially interfered with in other instances by the pasture rights of the king<sup>3</sup>. As in the case of arable and meadow, the undivided use could not be maintained indefinitely, so "in the case of pasture the faculty of sending out any number of beasts retires before the equalization of shares according to certain modes of 'stinting' the common"<sup>4</sup>. Generally speaking, the right of depasturing a given number of commonable cattle was proportionate to the size of the several holdings<sup>5</sup>. The regulation of such rights is a matter of no small importance in feudal times. Thus, in the survey of a manor described in Fleta an inquiry is to be made with a view to ascertain "what common pasture there is outside the domain, and what beasts the lord can place thereon"<sup>6</sup>. It is extremely interesting to note that the rights of the lord, together with those of his tenants, are limited by custom. Obviously, the right to depasture one's cattle on the common pasture originated in ancient custom. Moreover, the regulative power with regard to the rights of using the common is frequently associated with the township community and its normal holdings, or hides<sup>7</sup>. According to common law, a certain number of freeholders was an indispensable prerequisite to the court baron of a manor. Domesday reports a curious instance of three sokemen being borrowed from Picot, the sheriff, so that Count Roger might be able to hold his court<sup>8</sup>. Such an arrangement clearly reflects ancient custom.

It remains to say a word as to the modern classification of commons. The terms employed by the Anglo-Norman lawyers

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1) In Suffolk. 2) *D. B.*, II, 339b.: *In hundredo de Colenes est quaedam pastura communis omnibus hominibus de hundred Serutton, Commons and Common Fields*, 14. Other expressions referring to the pasture are: "*pastura ad pecuniam villae*", and "*pasturae communes*". Nasse, *op. cit.*, 28. 3) *Ibid.*, 29. 4) *Villainage in England*, 261. 5) These might consist of hides, virgates, and bovates. 6) Seebohm, *op. cit.*, 46. 7) *The Growth of the Manor*, 260, n. 18; cp. *Villainage in England*, 271—272. 8) Seebohm, *op. cit.*, 88; *The Growth of the Manor*, 363, 379, n. 59.



to distinguish the chief usages connected with the rights of common first make their appearance in the fourteenth century. The most important of these are 'common appendant' and 'common appurtenant'. Common appendant is defined as "the right which every freehold tenant of the manor possesses to depasture his commonable cattle<sup>1</sup>, *levant*<sup>2</sup> and *couchant* on his freehold tenement anciently arable, on the wastes of the manor"<sup>3</sup>. Originally, this right extended to all the common open pasturage in the manor, owing to the intimate relation which subsisted between agricultural and pastoral pursuits, particularly at a time when the open-field system was still in full vigor. Pasture was regarded as appendant to the arable. In the law of the fourteenth and succeeding centuries common appendant "appears as the normal adjunct to the holding, that is, to a share in the system of village husbandry"<sup>4</sup>. With common appendant is contrasted 'common appurtenant', which is said to be "against common right, becoming appurtenant to land either by long user or by grant, express or implied. Thus it covers a right to common with animals that are not commonable, such as pigs, donkeys, goats, and geese; or a right to common claimed for land not anciently arable, such as pasture, or land reclaimed from the waste within the time of legal memory, or for land that is not freehold, but copyhold"<sup>5</sup>.

Passing to the Inclosure Acts of the thirteenth century and onwards, it may be stated at the outset, that the notion of tenure entertained by the feudal lords was responsible for the promulgation of a series of enactments, affirming the right of the manorial lord to inclose, or appropriate to his own advantage<sup>6</sup>, a portion of the common land, provided he left sufficient

1) Such as oxen, cows, horses, and sheep. 2) *Levant e couchant en le maner* mainly refers to cattle constantly kept on the manor, and used for ploughing or manuring the arable land. 3) Scrutton, *op. cit.*, 42.

4) *Villainage in England*, 268. 5) Scrutton, *op. cit.*, 43. Common of vicinage applies to the right of intercommoning by the tenants of adjoining manors. 6) *Approve*, O. Fr. *approver*, *approuer*, *approuer*, to profit or enrich.

The expression *faciant commodum suum* of the Statute of Merton corresponding to the O. Fr. *aproent*, is rendered in the Statute of Westminster the Second *appruare se possint de*. The word *approve*, which means to make one's profit of (land) by increasing its value or rental, cannot be justified on

pasture to meet the needs of the free tenantry. The first Inclosure Act, formulated by a Parliament consisting exclusively of barons, and known as the Statute of Merton<sup>1</sup>, is worth quoting because of its bearing on the subsequent history of inclosures: 'Also because many great men of England who have *enfeoffed* knights and those who hold of them in free tenure of small tenements in their great manors, have complained that they cannot make their profit of the residue of their manors, as of wastes, woods, and pastures, although the same *feoffees* have sufficient pasture, . . . it is provided and granted that whenever such *feoffees* do bring an assize of novel *disseisin* for their common of pasture, and it is acknowledged before the justices that they have as much pasture as sufficeth for their tenements, and that they have free ingress and egress from their tenements into the pasture, then let them be contented therewith, and they of whom it was complained shall go quit of as much as they have made their profit of their lands, wastes, woods, and pastures. If, however, they allege that they have not sufficient pasture, or sufficient ingress and egress according to their tenements, then let the truth be inquired by assize, and if it be found by the assize that the same *deforceors* have in any way disturbed them of their ingress and egress, or that they have not sufficient pasture, then shall they recover their *seisin* by view of the inquest, so that by their discretion and oath the plaintiffs shall have sufficient pasture, and sufficient ingress and egress in form aforesaid; and the *disseisors* shall be amerced, and shall yield damages as they were wout before this provision. If, however, it be certified by the assize that the plaintiffs have sufficient pasture with ingress and egress, as said before, then let the others make their profit of the residue, and go quit of that assize'<sup>2</sup>. But whether the lord of the manor had full power from now on to inclose against commoners of every description was still a debatable matter, the only class mentioned in the statute being the freehold tenants of the

etymological grounds. A more correct form would be *approw*. Murray, *English Dictionary*; Pollock, *The Land Laws*, 173, n. 1.

1) 20 Henry III., C. 4 (1235 A. D.). 2) Digby, *History of the Law of Real Property*, 133, 205; Shaw-Lefevre, *op. cit.*, 12; Cp. *The Growth of the Manor*, 171f.

manor. Consequently, we hear of another statute<sup>1</sup> in the year 1285, granting an extension of the same power against the claims of neighbors<sup>2</sup>.

The Statute of Merton, which continued to be the ordinary form of inclosure for several centuries, soon occasioned much discontent among the yeomanry, as is seen from the many recorded instances of disputes concerning inclosures and common rights. The decisions rendered in each case, while occasionally upholding the claims of the plaintiffs, generally led to further encroachments on the rights of commoners, especially when it could be shown with more or less plausibility, that there was left a sufficiency of pasture with which to satisfy the rights of the yeoman class. The rise of a commercial spirit inaugurated in the reign of Edward IV., had a still more disastrous effect upon the general condition of rural communities. Finding that the growth and export of wool was a much more profitable undertaking than the pursuit of agriculture<sup>3</sup>, the scattered strips of arable held in severalty by the tenants during a part of the year were inclosed and converted into sheep runs. Bacon, in his *History of the Reign of Henry VII.*, says: "Enclosures, at that time, began to be more frequent, whereby arable land was turned into pasture, which was easily rid by a few herdsmen; and tenancies for years, lives, and at will, whereupon much of the yeomanry lived, were turned into domains. This bred a decay of people and a decay of towns, churches, tithes, and the like. The king, likewise, knew full well, and in nowise forgot, that there ensued withal upon this a decay and diminution of subsidies and taxes; for the more gentlemen, ever the lower books of subsidies. In remedying of this inconvenience, the king's wisdom was admirable, and the parliaments at that time. Enclosures they would not forbid, for that had been to forbid the improvement of the patrimony of the kingdom; nor tillage they would not compel, for that was to strive with nature and utility; but they took a course to take away depopulating enclosures and depopulating pasturage, and yet not by that name, or

1) 13 Edw. I, c. 46, commonly referred to as the Statute of Westminster the Second. Cf. Digby, *op. cit.*, 229f. 2) *vicini*. 3) Grain could be readily imported, if necessary, at a reasonable rate.

Schaeffer: Hebrew Tribal Economy.

by any imperious express prohibition, but by consequence. The ordinance was, that all houses of husbandry, that were used with twenty acres of ground and upwards, should be maintained and kept up for ever, together with a competent proportion of land to be used and occupied with them". This enactment was succeeded by others of a similar character, but it seems that the evil of inclosure grew apace. Thomas Beacon, in his *Jewels of Joy*<sup>1</sup>, inveighs against the "greedy caterpillars of the common weale, who add Lordship to Lordship, farm to farm, pasture to pasture. How do the rich men and especially such as be sheep-mongers oppress the king's liege people by devouring their common pastures with their sheep so that the poor people are not able to keep a cow for the comfort of them and of their poor family". Wholesale evictions, followed by much idleness and great suffering, finally led to the insurrections of 1549. A period of remedial legislation, of which we shall have occasion to speak elsewhere, proved ineffectual in the face of economic conditions. However, the time arrived at last, when arbitrary inclosures under the Statute of Merton gradually gave way to private and local Acts passed by Parliament in the reign of Queen Anne. Their object was to facilitate the inclosure of commons on a more equitable basis. The inclosure of such commons as were suitable for the production of corn was regarded as most desirable owing to an increase of population and the growth of industries. With this object in view, committees were appointed by Parliament for the purpose of allotting a proportionate equivalent of the land thus dealt with among all persons having rights of common under the open-field system. Singularly enough but 338,000 acres were inclosed in this manner from 1709 to 1760<sup>2</sup>. But the movement in favor of inclosures made substantial gains in the period from 1760—1844, in the course of which 3867 Inclosure Acts<sup>3</sup> were passed amounting to nearly 4,000,000 acres. In view of the expense entailed in obtaining the passage of a private Inclosure Act through Parliament, it was recommended by the Board of Agriculture in 1794 that a general Bill for inclosures be approved by both

1) A. D. 1540. 2) For methods of inclosure in the seventeenth century, see *Trans. Roy. Hist. Soc., New Series*, XIX, 107 f. 3) Porter, *Progress of the Nation*, 146; Seebohm, *op. cit.*, 15.

Houses facilitating the mode of procedure incident to inclosure. The first general Act of Inclosure passed in 1801, and supplemented by the Inclosure Act of 1845, resulted in another period of inclosure. This ran its course till 1869 when the propaganda for the preservation of commons as play grounds and open spaces put a stop to inclosures previously effected through the medium of a permanent commission appointed in 1845<sup>1</sup>. It goes without saying that if inclosure had ceased at a much earlier period the open common land of England and Wales would be far in excess of the 2,000,000 acres of the present time<sup>2</sup>. The amount of land appropriated under the Statute of Merton and the Inclosure Acts of the last two centuries must have been enormous.

After all is said with regard to the economic advantages of inclosure, the bare fact remains that the substitution of pasture for arable and the consolidation of farms had a most disastrous effect on the smaller yeomanry and agricultural laborers. These were not infrequently reduced to helpless poverty in consequence of numerous evictions enforced by the rich landlords. Without the customary rights of common many of the smaller farmers were obliged to sell their cows and other stock to the large farmers and join the ranks of the landless class with little or no prospect of ever rising from their precarious position<sup>3</sup>. The decreased demand for labor only intensified the

1) Sporadic instances of inclosure are met with as late as 1901 and 1902. Cf. *The Inclosure of Common Fields in the Seventeenth Century*, by Miss Léonard, in *Trans. Roy. Hist. Soc.*, XIX, 101, n. 3.

2) Shaw-Lefevre, *op. cit.*, 5. Geoffrey King, who wrote in 1696, estimates the arable land of England and Wales at 11,000,000 acres, pasture and meadow at 10,000,000 acres, woods and forests at 6,000,000 acres, moors, mountains, and barren lands at 10,000,000 acres. The figures given for lands of a miscellaneous character would yield a total acreage of 39,000,000. But as the total area of England may be set down at 37,000,000 acres, the statistics compiled by King, although needing revision, nevertheless convey some idea of the enormous extent of land of a commonable type. Fisher, *The History of Landholding in England*, in *Trans. Roy. Hist. Soc.*, IV, 167.

3) Speaking of inclosures, Mr. Foster, who had seen service as an inclosure commissioner, says, that they injure the poor. Those in the habit of depasturing their stock on "the commons cannot prove their rights, and most who have allotments have not more than an acre, which being insufficient for the man's cow, both cow and land



distress already caused by inclosure. Obviously, more was needed by way of remedial legislation than statutes, making the conversion of arable land to pasture a penal offense. Nor could the savagery of the earlier Tudor laws against poor vagrants solve the problem of social pauperism, which became all the more acute after the dissolution of the monasteries in the reigns of Henry the Eighth and Queen Elizabeth. In pursuance of a more constructive policy an honest effort was made to provide relief against destitution in a way never attempted heretofore by the monasteries. When the appeals for voluntary contributions did not materialize, as anticipated, the churchwardens were empowered by an Act of 1562 to assess the parishioners, according to their means with the object of facilitating the relief of genuine poverty. The Act further provides for the eventual imprisonment of persons, refusing to contribute their alms. A statute of the year 1572, differentiating between the pauper and the vagabond, enjoins that the impotent poor of each parish be properly registered by justices of the peace, and settled in fitting habitations, the amount necessary for their maintenance being charged to the account of the inhabitants. The care of the aged and infirm was intrusted to the overseers of the poor in each parish. A subsequent enactment<sup>1</sup> makes provision for the employment of the poor. The payment of semivoluntary contributions was made compulsory by the Elizabethan Poor Law of 1601<sup>2</sup>, which represents the results of nearly forty years of experimentation<sup>3</sup>. This Act continued in force for all practical purposes until the poor law reform of 1834, known as the Poor Law Amendment Act<sup>4</sup>. Though humanitarian in its origin and preventing actual destitution, the old Poor Law of Elizabeth had almost demoralized the laboring

are usually sold to the opulent farmers; the price is dissipated, doing them no good when they cannot expend it in stock". Scrutton, *op. cit.*, 147.

1) The 18<sup>th</sup> Elizabeth, c. 3. 2) 43. Elizabeth, c. 2. 3) Of the Poor Laws enacted in the reign of Queen Elizabeth, 5 Elizabeth, c. 3 (1562) was the earliest. Other acts of special importance from the point of view of relief measures against destitution are as follows: 14 Elizabeth c. 5; 18 Elizabeth, c. 3; 39 Elizabeth, c. 3; and last but not least 43 Elizabeth, c. 2. 4) It may be well to mention the Act of 1722 providing for the erection of workhouses, where relief was given to those, who were unable to find employment.

class by reason of the many abuses which had grown up around it. To remedy the evils of maladministration apparent on all sides, the above Act was passed creating a board of poor law commissioners for England and Wales, with power to appoint assistant commissioners and other officers. The whole of England and Wales was divided into twenty-one districts, and the different parishes were combined into Unions, controlled and administered by a central body and its subordinates. Thus the whole object of a Poor Law was approaching reality, thanks to the experience of the past. The relief which supplemented the insufficient wages paid by the agricultural employer of former days was abolished. Henceforth it was incumbent on the opulent farmer to pay a living wage. The process of readjustment, as is natural in such a case, required some time, but in the end the new law materially improved the condition of the agricultural laborer. The Act of 1834 also required that paupers could only get relief by entering the workhouse. Thus the type of pauperism engendered by abuses of long standing was reduced to a minimum. And finally, the excessive poor rates, which had become an almost intolerable burden under the old system, were kept within reasonable bounds.

Open-field husbandry, or champion farming, as described in the previous pages, has prevailed in England for more than a thousand years. There are clear traces of its existence dating from the laws of Ine<sup>1</sup> to the Inclosure Acts of the nineteenth century<sup>2</sup>. The open-field system in its simpler forms even antedates the Roman occupation of Britain<sup>3</sup>. It was certainly not

1) Seventh Century. 2) Seebohn, *op. cit.*, 13f.; 105. Nasse, summing up the evidence in a number of works by Marshall, a voluminous writer on agriculture between 1770 and 1820, remarks: "In nearly all parts of the country, particularly in the midland and eastern counties, but also in the west, for instance in Wiltshire, and in the south, as in Surrey, and in the north, as in Yorkshire, extensive open and common fields were to be found. In Northamptonshire, out of 317 parishes, 89 were in this condition; in Oxfordshire over 100; in Warwickshire, some 50,000 acres; in Berkshire, half the county; in Wiltshire, the largest part; in Huntingdonshire out of 240,000 acres — the whole area — 130,000 were commonable meadows, commons, and common fields". *Op. cit.*, 5—6. 3) It was pre-Roman in Britain as elsewhere. Seebohn, *op. cit.*, 411.

of manorial origin<sup>1</sup>, but essentially an economic result tending toward an equalization of holdings on a proportional basis<sup>2</sup>. It is inconceivable that the open-field arrangement, which involves a most extraordinary intermixture of rights, could have been the result of the economic convenience of a lord. As a matter of fact, it was the most inconvenient and uneconomical system imaginable. The endeavor to explain the rural arrangements of mediaeval England from the point of view of individual appropriation, while accounting for a certain class of phenomena, fails to do justice to the communalistic features of English township life. To quote. "In open-field country the restrictive and regulating influence of the township extended to all the principal operations of husbandry — to the laying out and apportioning of the arable, to the rotation of crops, the regulation of seasons, the order of ploughing, sowing, hay-harvest and corn-harvest, to the division and allotment of meadows, the erection and removal of fences, the framing and keeping up of numberless rules in regard to agrarian limits and strips, to roads and right of way, to the use of cattle on the pastures, to stinting the commons in various directions, to responsibility for trespassing, etc. This very complicated and very restrictive system was spread all over England as well as in other countries of Western Europe, and its roots are certainly to be sought not in individualistic, but in communalistic notions, which even the individualistic law of feudalism was powerless to remove. Its history goes right back to the tribal period, which provides the best explanation for this communalistic side of rural life in the subjection of the individual to tribal rules and kinship organizations"<sup>3</sup>.

We shall dispense with a discussion of any additional data, which may be available from other areas. The material already adduced will suffice for our present purpose.

1) *Tribal Custom in Anglo-Saxon Law*, 519. Nor was the Welsh system manorial. *The English Village Community*, 187. 2) *English Society in the Eleventh Century*, 282. 3) Vinogradoff; *op. cit.*, 476.

## Errata.

Page VII, chap. IX	commonatly	= commonalty
„ 12 line 25	distrees	= distress
„ 16 „ 2	Jesusalem	= Jerusalem
„ 23 „ 12	alling	= falling
„ 34 note 3	thei	= their
„ 40 „ 1	Abaziah	= Ahaziah
„ 47 line 2	fathers houses	= fathers' houses
„ 62 „ 26	defenses	= defensive
„ 100 „ 20	heir	= their
„ 110 note 1	evrey	= every
„ 113 line 21	everning	= evening
„ 113 „ 22	becanse	= because
„ 124 „ 11	idendity	= identity
„ 127 „ 26	truei tn	= true, in
„ 135 note 3	th	= the
„ 138 line 31	town	= towns
„ 142 „ 7	s	= is
„ „ „	contiguo us	= contiguous
„ 182 note 6	unior	= junior

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